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ABSTRACT

This publication provides information for intervention and prevention services concerning sexual harassment and sexual discrimination in schools. It is especially designed for student services professionals and includes national and state laws, suggestions for how to work with students, and strategies for protecting employees and students. Chapter 1 discusses the need for this publication and the forms of harassment that often occur in schools. Chapter 2 explains the federal protections and how these laws are implemented. Chapter 3 relates what needs to be known to prevent sexual harassment and assault, including prevention strategies; environmental assessments; staff evaluation; awareness activities for students; reporting requirements; and ways of protecting yourself. Chapter 4 is directed towards student services practices and discusses how to intervene in and investigate sexual harassment. A list of resources usually available from state Departments of Education is included. Appendixes include: State Laws Prohibiting Sex Discrimination and Sexual Harassment, Information on these State and Federal Laws, A Sample School District Policy, a True/False Quiz, a group worksheet, and Case Studies dealing with Sexual Harassment. (Contains 2 tables and 15 references.) (JDM)

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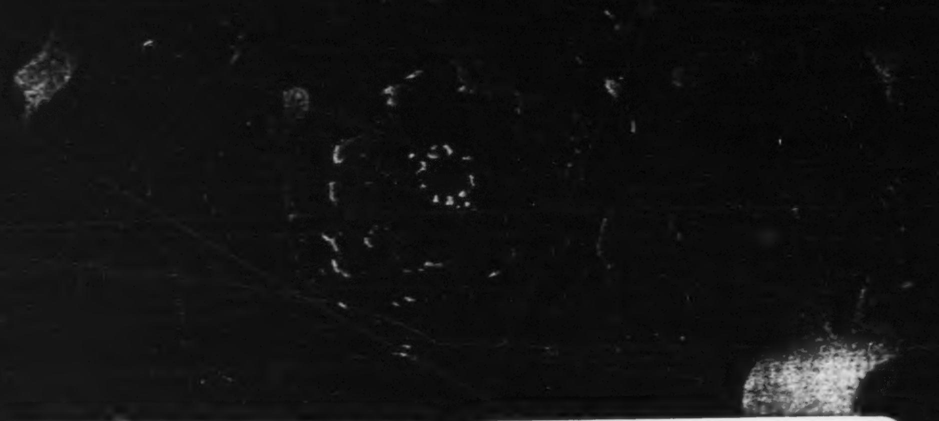
Sexual Harassment & Student Services Personnel

Information for School Counselors, Social Workers, and Psychologists



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Sexual Harassment & Student Services Personnel:

Information for School Counselors, Social Workers, and Psychologists

Melissa A. Keyes, Ph.D.

Sexual Harassment & Student Services Personnel:

Information for School Counselors, Social Workers, and Psychologists

A title in the "Know More, Do More" series
Published by the American School Counselor Association

This publication provides information for prevention of and intervention in sexual harassment in schools, especially designed for student services professionals. It includes national and state laws, suggestions for how to work with students, and strategies for protecting employees and students. There is a special focus on useful prevention techniques, as well as how to investigate complaints or rumors.

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Acknowledgments

I have been fortunate to know and work with the pioneers who have written about sexual harassment in schools since the early 1980's. There is hardly an original thought in this handbook; my contribution, I hope, has been to write about my experiences, draw on the expertise of pioneers, and package the material in a way that is helpful to school guidance counselors, school psychologists, school social workers, and other student personnel professionals.

I want to thank those who initially put their thoughts and studies out there for the public and equity professionals like me to use.

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Chapter One

Introduction

The Need for This Publication

A dramatic change has taken place in the way schools must deal with sexual harassment. After October, 1991, when Professor Anita Hill testified against the confirmation of Supreme Court nominee Clarence Thomas, an event witnessed first-hand by millions of television viewers, the issue of sexual harassment in the workplace and by extension, in schools, moved to the forefront of public consciousness. A few months later, the Supreme Court held unanimously, in Franklin v. Gwinnett, that if a school was found to discriminate under Title IX of the Education Amendments of 1972 (the federal law that prohibits discrimination on the basis of sex in public schools, colleges, and universities), complainants could sue the school district for monetary damages—unlimited monetary damages. School administrators began to take notice, concerned about the climate in their schools and aware of the possible financial impact. They wanted to know what they could do to prevent incidents and improve the learning and working environments in their schools. The need for policy and staff development was evident.

As a school counselor, social worker, or psychologist, you will find this publication useful because you probably already deal with sexual harassment and assault in schools, perhaps on a daily basis.

You must deal with those issues because:

- the number of incidents and complaints are increasing;
- official complaints of sexual harassment are being filed in courts as well as in schools and with the federal Office for Civil Rights;
- schools and school personnel are being held liable for not preventing harassment;

- counselors and pupil services personnel, because of the nature of their jobs, are often called on to prevent, intervene, and investigate allegations of sexual harassment;
- training about these issues and how to address them has not been, to date, a part of educators' professional education, so massive staff development is needed;
- there is a dramatic impact on students and employees who experience harassment;
- public awareness of and intolerance for harassment are growing;
- school employees are both protected from and prohibited from taking part in sexual harassment.

The incidents you will read about in this handbook are real. A few cases have been reported in the media; I will use names that have been publicized in these cases. Some are cases I have dealt with personally, either as a state employee or as an independent consultant. In situations that have not been made public, I have changed some minor details in order to respect privacy. I have included them so readers can see that sexual harassment is prevalent in our schools and that some of the most unlikely and bizarre situations can occur, especially when educators are not prepared or take situations lightly. You may be tempted to dismiss these cases and think that they could not possibly happen in your school. That's what most of the educators in these incidents thought.

The purpose of this handbook is to provide information that may be needed by school services personnel dealing with the issue of sexual harassment in K-12 public schools.

A Note About Language: "Target" or "Victim"?

You will notice that I use the term "target" rather than "victim" for those who are the recipients of sexually harassing behavior. Either term is used by advocates, but I usually prefer "target." Certainly anyone who receives harassing behavior is victimized, in the sense that they suffer from a "...destructive, injurious, or adverse action..." (American College Dictionary). However, the term "victim" often establishes passivity or helplessness, which is often not the case prefer to encourage everyone to find their voices and speak up against harassing and intimidating behavior. To me, the word "target" eliminates the baggage that comes with the word "victim."

Increasing Number of Complaints

I worked for several years in a state education agency, where I helped school districts achieve compliance with federal and state laws that prohibit sex discrimination, including Title IX. According to a memo issued by the U.S. Department of Education in 1981, sexual harassment falls under Title IX when it is a form of sex discrimination.

Although Title IX was the focus of my work, prior to the congressional hearings at which Anita Hill spoke in 1991, I had received no more than a dozen phone calls inquiring about sexual harassment in eleven years on the job. In the year after the hearings and the Franklin v. Gwinnett decision, I received 250 phone calls. The following year, I received 1300 calls. I got the picture that this was a huge issue for both parents and those working in education. I began to collect information and develop workshops and handouts.

National studies have documented the frequency of sexual harassment in our schools (AAUW, 1993; Stein, et.al., 1993; Lee, et.al, 1996). Anecdotal information from administrators attests to the huge demand on their time to address issues of sexual harassment and assault. Twenty years ago, no one would have predicted that this issue would be as inflammatory in the community, as common in our schools, or so difficult to deal with, as it is today.

The increasing pressure on educators, including counselors and other student services personnel, is a part of the reason why I have written this handbook.

Increases in court filings

Prior to 1991, there were very few complaints of sexual harassment in schools that were filed as civil or criminal suits in court. Only a few states were taking the issue seriously. Student-to-student sexual harassment was routinely responded to with "they're just being kids," "get used to it," or "he doesn't really mean it; he's always done that." The person being harassed was the one moved out of the study hall, not the perpetrator. The harassing person resigned "for personal reasons" and quietly moved to another school district, with a neutral or even positive recommendation by previous administrators. Teachers who molested or harassed students may have been removed from the classroom, even lost their teaching licenses, but rarely did the parents of students who were harassed file a civil suit for monetary damages.

Early court cases alleging sexual harassment typically involved employees being harassed by colleagues or supervisors. In business and industry, employers were held responsible for the harassment by their employees. It was rare to see an educator file a federal complaint, though it was often a topic of conversation. Sexual harassment was well-known at the post-secondary level, but few official complaints were filed, partly because students were unaware that the offending behavior was illegal or that schools were required to disseminate policies and procedures. Harassment was so much a part of the landscape that students and faculty (mostly women) endured it.

Students in secondary school sometimes complained of harassment of a sexual nature, but neither parents, students, nor school officials were aware that sexual harassment was illegal and that prevention measures were required. All that changed shortly after the Clarence Thomas confirmation hearings.

A cursory review of the number of court and agency decisions handed down on sexual harassment in schools (Thompson, 1997, updates) indicates a ballooning of the number of such cases after 1992. Most Letters of Findings issued by the federal Office for Civil Rights on sexual harassment in schools begin to appear in 1993 and 1994.

Schools and school personnel being held negligent

By the late 1980's, federal courts were hearing cases of sexual harassment in schools involving student-to-student sexual harassment. Courts were holding school districts and individual school administrators responsible for not following up on allegations of sexual harassment. A federal case which had enormous impact and attracted national notice, originated in Ashland, Wisconsin. The details may be well-known to readers because the young plaintiff's name and case were widely reported in educational and mainstream media.

> *Three administrators from the Ashland (WI) School District were held liable in a case in which a young man, Jamie Nabozny, charged that he was verbally and physically harassed at school because of his sexual orientation and sex. This case marked the first time that the Equal Protection Clause of the U.S. Constitution was used to allege discrimination on the basis of sexual orientation (Wisconsin's pupil nondiscrimination statute and rule, however, had protected public school students from discrimination and harassment on the basis of sexual orientation since 1985). Although the school district had adopted a policy prohibiting such discrimination, the court found that the administrators' failure to enforce the policy constituted intentional discrimination. The court also stated that the school's alleged conduct was "motivated by the (administrators') disapproval of Nabozny's sexual orientation." In an out-of-court settlement, the school district's insurance company agreed to pay $962,000 in damages to the plaintiff, Nabozny.*

Other similar cases emerged in which administrators were held negligent for not taking allegations of sexual harassment seriously. Settlements or court-awarded damages reached record amounts. A California jury awarded a female student $500,000 in damages for her school's negligence in addressing her complaints of verbal sexual harassment by a male classmate [Doe v. Antioch Unified School District, Contra Costa County Super. Court. (Calif.), No. C94-01307, Oct. 1, 1996]. The Petaluma, California, City School District agreed to pay a female $250,000 to settle a suit in which the former student alleged that the school had failed to act on her complaints of peer sexual harassment (Doe v. Petaluma City School District, N.D. Cal., No. C 93-00123 CW, July 22, 1996). A school district agreed to a $1.925 million settlement of several lawsuits brought by nine female former students who alleged that they were sexually molested by a fourth grade teacher. In this settlement, the school district agreed to train all employees on sexual harassment, abuse and assault and to revise its complaint policies and procedures.

Pupil services personnel often the first adult involved

We want school services personnel to know more about this topic because we know (and more importantly, students also know) that they care about students and what happens to them. Counselors are often the first to know that students need protection from adults in the school they've been taught to trust. School services personnel are frequently involved in sexual harassment and abuse cases in schools. They are often assigned to investigation teams because of their personnel training. Counselors are often called upon to inform administrators of harassment when they learn about it from students; they need to understand that they cannot maintain absolute confidentiality when a student tells them about being harassed, especially by a teacher or other school employee. School services personnel need strategies for helping students who are targets of harassment and assault find their "voices" and take the initiative to speak out against what is happening to them.

Training needed

Few educators have been trained to understand what sexual harassment is, or what to do about it. Teachers and student services personnel have suddenly found themselves dragged headlong into investigations for which they have no expertise and the school has no policies or procedural guidelines. As a result, they have made mistakes when dealing with allegations and complaints.

Counselors tell me they are unsure of what to do when a student charges a teacher—the counselor's colleague— with inappropriate touching. An administrator even told me that when a student accused a teacher of assault, a counselor in her building went to the teacher to warn him that the girl was "telling."

In the early days of implementation of sexual harassment and assault laws, suit after suit in which administrators had placed teachers on probation for sexual harassment or contact with children was thrown out of court on technicalities. People whose behavior suggested they should lose their teaching or administrative licenses were reinstated because of bungled investigations.

But how many of us ever learned about how to deal with sexual harassment when learning about how to work with students? Usually, harassment took the form of verbal "kidding" that got out of hand, or perhaps gang-related incidents. Maybe we never learned about the sexual stuff, perhaps it wasn't happening to students in school, or maybe students just thought it was part of the landscape, something to be endured as part of the culture.

There's no question that it's part of the culture now. Mary Pipher, in her landmark book, *Reviving Ophelia: Saving the Selves of Adolescent Girls* (1994, Ballentine) says that our culture has changed from one in which it was hard to get information about sexuality to one in which it's impossible to escape information about sexuality. Unfortunately, the sexuality we learn about is side-by-side and a part of violence, abuse, and instant gratification. Every type of sexual abuse is present in the hallways of our schools, from less innocuous verbal comments about bodies and sexual habits to actual sexual assault by one or more assailants.

> *I recently visited an elementary school, at the request of administrators, to work with teacher and other adults in the school to help prevent sexual harassment. Teachers stated that this information was all very interesting, but there were no problems like this in their school. At that point, the pupil services team (school social worker, school psychologist, counselor, and principals) spoke up. Each team member reported that they work with sexual incidents every day. They told about the amount of time they spend on these situations per week. The teachers, who were not informed of each incident (rightly so, for privacy concerns), were stunned.*

Massive staff development is needed to help staff recognize and prevent sexual harassment and train administrators and others to investigate.

Effects of harassment on students and school employees

We have long known about the effects of workplace sexual harassment. Those targeted for sexual harassment report depression, rage, helplessness and intimidation (Hess, 1992). Incalculable sums of money have been lost to business and industry because employees have left a site where they have been harassed, losing for their employers the training they received, the time and money needed to train replacements, and the disruption of change (Petrocelli & Repa, 1992). Not to be forgotten is the loss of work and lingering emotional anguish for the person leaving. Reputations of targets and of offenders have been altered forever. Women found that no one believed them, and men found they were unable even to raise the issue. At least these incidents involved adults, not children.

Now we are learning of student-to-student sexual harassment. It's not new; we probably all experienced it, or even participated in it, when we were growing up. In recent years, however, sexual harassment at its worst has taken on all the terrifying aspects of a horror film for some students, driving them away from school, evoking violent responses such as suicide or retaliation, building walls between them and their parents, and destroying self esteem. For students who are, or who are perceived to be gay, lesbian, bisexual, or transgender, daily life in school is punctuated by isolation, alienation, and rejection (O'Conor, in Unks, Ed., 1995) as well as name-calling and physical harassment. What has changed in the last two decades is that laws have been promulgated to prevent sexual harassment in schools, and several national studies have quantified the number of incidents of sexual harassment and abuse (Texas Civil Rights Project, 1997; AAUW, 1993; Stein, et. al., 1993).

We are also learning of vicious harassment and even assault of students by teachers, counselors, custodians, bus drivers, administrators and others working in and around schools. Graduates long gone from their alma mater are coming back to file complaints against former teachers, acknowledging that the effects of the harassment, assault, or abu have taken a toll on their college, work, or family lives. They say they have been unable to get on with their lives because of flashbacks, fear of intimacy, or inability to remember what happened to them as adolescents.

Changes in public awareness and expectations

Parents have become much more aware of the harassment of their children in school, and they aren't accepting it as a normal and acceptable hurdle their children must overcome in their development.

They are learning about sexual harassment laws in their workplace and know it is illegal. They hear stories from their children about cavalier use of sexual terms in school hallways, behavior by teachers or coaches that feels "icky," and intimidation through sexual touching. Parents know that others have sued and won monetary damages.

In my former work as state sex equity consultant, I heard parents demand many alternatives, some not so feasible. They wanted teachers fired for sexual behavior, wanted the school to teach their children at home, or wanted the school to pay for their child to travel to a neighboring district to school in order to avoid daily contact with harassers. In some cases, the parent wanted monetary damages or wanted to remove their children from public schools and school them at home "where they could be safe." Some parents had contacted teachers and administrators many times to try to stop the offending behavior; others had avoided school personnel entirely and gone directly to the education chief in the state, their congressional representatives, state legislators, or the governor. In ALL cases, in my experience, the parents or guardians (or even the students who had contacted me themselves) had wanted educators at their school to pay attention to their complaints. And they wanted the inappropriate behavior to stop.

I repeat the most important tip I have for school services personnel: take reports of sexual harassment, assault and abuse seriously. We recognize that some students and some parents will make false charges. We know they will badger educators. But with this issue, we can make no assumptions of innocence (or guilt) without further investigation or inquiry and documentation. We rarely know what goes on behind closed classroom doors after school. For example, we are dismayed to learn that a music teacher has singled out a twelve-year-old girl for special attention and personal gifts, cornering her in practice rooms when no other students are present. Too many of us have been horrified to discover that the revered teacher who has been on our staff for over 20 years has been systematically touching girls' breasts as he helped them with mathematics. Or that the coach has been inviting "special" girls to his home for sexual relations while his wife is at work. We learn with disbelief that the physical education teacher has been introducing young boys to sex in her apartment. We may find out that the handsome young athlete who is president of the senior class has been enticing students with cognitive disabilities to his basement for "parties."

Employees covered as well as students

Apart from their concerns for their students, pupil services personnel are employees and, as such, are protected from sexual harassment themselves. They need to know how to respond to sexual harassment if it happens to them. They need to know their rights while filing a complaint and their due process rights if accused.

All employees need to know that the laws have changed. They will be held accountable to their schools' policies and to the law.

The need for immediate response

It may turn out that, after making initial inquiries, an allegation either cannot be substantiated or can be easily resolved. One never knows unless one takes it seriously. I have seen too many cases that were ignored and which festered into huge, very unpleasant situations. In some cases, school officials never even returned a parent's phone call; this is an omission that guarantees a parent's rage against the school.

A parent accused a high school math teacher of verbal abuse, sexual harassment, and sex discrimination. The parent did not file a complaint officially because she was not aware of the requirement for a district complaint procedure, but she contacted the school and registered a general verbal complaint. Two hearings were held as a result of her allegation, at which former students testified, many in support of the complainant. The former students and several parents felt that the testimony was not taken seriously by the district, which dismissed the testimony, and that the issue was being swept under the rug. The caller met with her state legislator, contacted women's groups and a sexual assault crisis line in the area for help, and called the regional Office for Civil Rights. In the course of her inquiries, she contacted the state education agency, which informed both her and the school that the school was required to have an official complaint procedure available to the public. The events leading up to the school's eventual investigation and resolution of the situation took three years and cost district personnel hundreds of hours and thousands of dollars. The teacher is no longer an employee of the district.

Most of the incidents reported to me could have been taken care of immediately if only the employee had listened, investigated, or even reported allegations to a supervisor who then took over the investigation. If the allegations prove themselves to be false, you should stop the investigation and refute the rumors. If they are true, you will have saved many hours, months, or even years of anguish for the student or employee being harassed or abused at school. You may even save his or her life.

Other Forms of Harassment

We recognize that many forms of harassment and abuse may take place in schools. Discrimination on the basis of race, national origin, religion, color, disability, and other characteristics are prohibited in schools, so why aren't we talking about them as well? What about plain, old harassment for "no reason whatsoever"?

The guidelines prohibiting sexual harassment in the workplace were the first federal attempt to define behavior which did not have wide-spread recognition, or even a nationally-known name, prior to 1980. Those early guidelines dealt only with harassment of a *sexual* nature, so court cases filed in the 1980's dealt with sexual harassment, and those cases further shaped how we interpret unwanted behaviors of a sexual nature. When, in 1981, the U.S. Department of Education issued its memorandum stating that Title IX prohibiting sex discrimination in public schools could also be used to prohibit sexual harassment in schools, the guidelines we used for work situations were applied to schools. The courts' clarification of what constitutes sexual harassment is what we have at this moment, though I am certain that future claims will focus on other forms of harassment based on other protected classes such as race, disability, religion, or national origin. As a result of significant court cases that addressed sexual harassment only (or its ancillary issue, sexual orientation), we will only deal with that content in this handbook.

Schools should be aware, however, that they can establish policies prohibiting any type of harassment, even that not specified by law.

A Call to Attention

We MUST take each rumor or allegation seriously in order, we hope, to prove it wrong if it is wrong. Too many reputations and careers have been ruined by denial, avoidance, or even cover-ups in dealing with these issues. Too many students or employees have had their lives changed forever because one of us did not pay attention. As educators and as the adults in the building, we are responsible for the welfare of students in our schools.

Children learn to do what they see and experience; when sexual harassment is allowed to continue in schools, children learn those behaviors as part of the hidden curriculum. They take inappropriate behaviors with them into adulthood. Even without the threat of monetary damages against schools, these are reasons enough to examine this topic and begin to make positive changes. For our children's safety, for our reputations as educators, and for a comfortable and productive work environment, we must learn about sexual harassment and do something to stop it in the present and prevent it in the future.

Chapter Two

What You Need to Know About the Law as an Employee of the School

While reading this chapter, readers should remember that the author is not an attorney or a legal scholar. If questions arise concerning interpretation of the law described in this chapter, please consult the Office for Civil Rights, your state education agency, the Equal Employment Opportunities Commission office in your region, or an attorney or professor of law. No one should assume that the author or the American School Counselor Association is providing legal advice in this or any portion of this document.

Both employees and students in public school systems are protected from sexual harassment and discrimination by federal law. In addition, many state statutes parallel federal law and protect both adults and students. A full description of relevant federal laws and guidelines is provided in the first part of this chapter.

The second part of this chapter provides operational interpretations of the language of the guidelines and court cases that define sexual harassment. Examples are given to illustrate how the letter and spirit of the law are carried out in school situations. Also included are responses to common questions about interpretation of the law.

Sometimes federal and state statutes overlap and it appears confusing, especially if one wants to file an official complaint or when a school wants to meet state-required procedural requirements that are different from federal requirements. Furthering the confusion may be the different requirements for protecting employees versus students. Chart 2A may help to clarify which federal laws protect employees, which protect students, and which protect both. In the chart, under "Federal Law or Guideline," the columns include the following: the first column gives the name of the federal statute or name of the guidelines or letters of findings issued by the federal agency; the second column states whether the law or guideline applies to employees, students or both; the third column describes the essence of the law or guideline; and the last column lists the policies or procedures that are required of employers or schools under each law or guideline. In some cases, no policies are required, so "N/A" is listed.

The section of the chart entitled "State Laws or Guidelines to Watch For" is a list of several sources where one may find states' prohibitions against sexual harassment.

Included in Appendix A is a chart describing current conditions of state law relative to sexual harassment.

Text which can be arranged into a one-page handout that combines information on one state's laws with a short description of federal law is provided in Appendix B.

Chart 2A

Federal Law or Guideline	Applies To	What It Does	Policy & Procedure Requirements
•*Title VII of the Civil Rights Act of 1964*	Employees	Prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin	Posting of public notice of nondiscrimination and information pertinent to the filing of a complaint
•*Equal Employment Opportunity Commission Guidelines*	Employment situations protected under the Civil Rights Act of 1964	Provide technical assistance on compliance; resolve complaints; undertake needed studies; intervene in discriminatory situations	N/A
•*The Civil Rights Act of 1991*	Employment situations protected under the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990, and the Rehabilitation Act of 1973.	Allows for damages, which differ for public and private employees and which are capped depending on the number of employees in an organization.	N/A
•*Title IX of the Education Amendments of 1972*	Students and employees in institutions receiving federal financial assistance	Prohibits discrimination on the basis of sex. Harassment on the basis of sex is covered as well.	•nondiscrimination policy; •procedure that can be used for complaints of discrimination (or harassment); •ongoing notification of nondiscrimination; •employee to coordinate.
•*Title 42 of the U.S. Code, Section 1983 c*	Students and employees	Prohibits those acting "under color of state ..." from violating federal laws, including sex discrimination law	N/A
•*U.S. Department of Education Office for Civil Rights Sexual Harassment Guidance: Harassment of Students by School Employees, Others Students or Third Parties.*	Students	Pursuant to Title IX, prohibits discrimination on the basis of sex. Harassment on the basis of sex is covered as well.	Pursuant to Title IX, requires: •nondiscrimination policy; •procedure that can be used for complaints of discrimination (or harassment); •ongoing notification of nondiscrimination; •employee to coordinate.
•*Letters of Findings from the U.S. Office for Civil Rights*	Students and employees	After investigation of complaints filed under Title IX and other civil rights laws, provides a formal statement describing the complaint and any findings of violation of the law by the school (under certain conditions)	Varies by findings

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State Laws or Guidelines to Watch For

- *State employment statutes prohibiting discrimination and harassment*
- *Human Rights Laws*
- *Civil Rights Laws*
- *Executive Orders*
- *Rules, Regulations, and Codes*
- *Pupil nondiscrimination statutes*
- *State education agency guidelines*

What does the law say?

Explanation of Federal Protections and Requirements

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, national origin, religion or sex. Sex discrimination under Title VII has been interpreted by the courts to include sexual harassment. Title VII covers all employees in public and private institutions, including schools, having 15 or more employees. The Equal Employment Opportunities Commission (EEOC) is the agency to which complainants may petition if they feel as if their rights have been violated. There are EEOC regional offices located in most larger cities throughout the United States.

In 1980, the EEOC issued ***Policy Guidelines on Sexual Harassment***, declaring sexual harassment a violation of Section 703 of Title VII. Among other things, the guidelines established criteria for determining what types of behavior constitute sexual harassment. Employers, courts and the EEOC thereafter began applying the guidelines, resulting in litigation that has continued to clarify the meaning and support EEOC interpretation of the guidelines ever since.

It is not always easy to identify sexual harassment; that is why the EEOC calls them "guidelines" rather than "rules" or some other more rigid term. Every situation is different, involving targets and perpetrators with differing perspectives, expectations, ages, and genders. Some situations are very subtle rather than very obvious, but still disturbing to the person filing a complaint. These guidelines can only give us general parameters. The court cases that have occurred since 1980 clarify the issue, so it is important to understand the major decisions. Many professionals working with the guidelines have devised "behavioral" or "operational" guidelines, which this handbook will provide as well (see Chart 2B in this chapter).

Because the EEOC guidelines serve as the legal basis for all definitions of sexual harassment, they will be explained in detail here.

> "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

This definition has served as the basis for describing sexual harassment in the workplace, and by extension, to educational programs protected from sex discrimination under Title IX.

The guidelines further describe how the EEOC will determine whether alleged conduct constitutes sexual harassment, the responsibilities of employers, and suggestions for prevention of sexual harassment.

Additional definition of the EEOC Guidelines is provided through key federal court decisions since 1980. Clarifications regarding two types of sexual harassment have emerged from the court cases: *quid pro quo* and *hostile environment*.

Quid pro quo sexual harassment. Federal courts first clarified that the provisions under (1) and (2) of the guidelines (see the box, above), called "quid pro quo" sexual harassment, may, when proven, result in strict liability for employers, whether or not they knew or should have known of the harassing acts of their employees. *Quid pro quo* is a Latin phrase, roughly translated as "this for that." In the school environment, examples of quid pro quo sexual harassment might be the following: a teacher giving a student a better grade in exchange for sexual favors; a female student completing a male students' homework in exchange for dating and having sex with him; a boy retaliating against a girl (by ruining her reputation or calling her names in front of her friends) for refusing to have sex on a date, or; a principal naming a student as special assistant during his study hall, in exchange for his listening to the sexual problems she's having with her husband (See *Alexander v. Yale*, 1980, among others).

In all the above cases, there has been an exchange: a reward for submitting to some sort of behavior which has a sexual connotation. The conditions are fairly straightforward and one can readily see that had the submitter not complied with the demands of the perpetrator, there would be no reward. The courts, the Office for Civil Rights, and the EEOC found that these types of cases were clearly examples of unwelcome sexual harassment.

In some cases, the harasser may not have absolute authority to award grades to the target, or hire or fire the target. In these cases, the school may not be strictly liable. However, if the target believes that the harasser has that authority, the school may be held liable. The school may also be liable when the harasser is acting in official capacity on behalf of the school.

Hostile environment sexual harassment. More complex and difficult to define, hostile environment sexual harassment also can result in the school district being held strictly liable if supervisory personnel are involved, whether or not the employer knew or should have known of the conduct. (See *Meritor Savings Bank v. Vinson*, 1986, among others). We are also beginning to see courts finding students guilty of creating hostile environments against other students or against educators.

Although hostile environment harassment is often more complex than quid pro quo sexual harassment, it is much more prevalent and is often found in schools. Hostile environment sexual harassment, number (3) in the EEOC Guidelines, is sometimes hard to identify. In these cases, the courts have held that hostile environment sexual harassment may be claimed when, for example:

- the target is subjected to unwelcome repeated sexual innuendoes, comments, jokes, graphics, or touching, and those behaviors are interfering with his or her school or work performance, or access to opportunities;
- the conduct is gender-based and results in a pattern of behaviors that create an intimidating, hostile, or offensive work or school environment.

Some behavior that has been classified as hostile environment sexual harassment is severe or outrageous enough that one incident is enough to constitute harassment; the complainant is not required to show repeated incidents to prove hostile environment. The less severe the behavior, however, the more times it must be repeated (its frequency) to qualify as sexual harassment. In many cases, the court requires evidence that the school or employer knew or should have known of the harassing acts of other students or of its employees and did not act to stop them in order for the school to be held liable.

One example of hostile environment sexual harassment is evidence of daily comments of a sexual nature that are made to girls as they walk down a school hallway past a row of boys, resulting in the girls' reluctance to take the classes meeting in that hallway. Another example is a coach's repeated taunting of a football player who, the coach says, "runs like a girl" or "is a pussy." Comments of this type are clearly attacking the player's masculinity, questioning his "manhood" in an intimidating way, and are designed to humiliate or (worse) motivate a player. They are also a misuse of a coach's power over a student.

When adult employees engage in sexual behavior with other adults in the workplace, the behavior may be labeled sexual harassment when: 1)the target of the behavior does not welcome it from his/her colleague, or; 2) the target welcomes the behavior (responds positively) but the behavior is inappropriate for the workplace and/or is observed by a third party. An example of the latter is when two teachers are having an affair and their attraction becomes part of their interaction in school, to the point where they are kissing and hugging (or more) in the teacher workroom during their preparation periods. While it is none of the school's business if they have an affair, romantic kissing and hugging are not professional behaviors at school. Their colleagues may be embarrassed and uncomfortable when entering the workroom and may file a sexual harassment complaint to stop the behavior. This is also an example of so-called "third-party sexual harassment," which affects on-lookers rather than those engaged in the behavior. Although rare in my experience, third party sexual harassment could be quid pro quo harassment as well as hostile environment sexual harassment.

There are no requirements under the EEOC guidelines for policies or procedures, but a workplace would be well-served to have workable policies and procedures in place.

The Civil Rights Act of 1991 revises certain sections of the Civil Rights Act of 1964, and, like that law, addresses discrimination on the basis of race, color, religion, sex, or national origin. The 1991 Act stipulates that "...the complaining party may recover compensatory and punitive damages..." but limits the damages an employer might pay based on the number of employees. The maximum that an employer found guilty of discrimination might pay is $300,000 for each complaining party (with more than 500 employees). An employer with 14 to 101 employees might be required to pay up to $50,000 per complaining party.

Title IX of the Education Amendments of 1972 protects both employees and students. Title IX is the federal civil rights law that outlaws sex discrimination in public schools and colleges receiving federal financial assistance; it was signed into law by President Nixon in 1972, and regulations designed to implement the law were adopted by Congress in 1975. The federal agency that serves as the enforcement arm for implementation of federal civil rights law in schools, under the auspices of the U.S. Department of Education, is the Office for Civil Rights (OCR), which has ten regional offices throughout the country.

The U.S. Supreme Court clarified in *Cannon v. University of Chicago* , 441 U.S. 677, 694 (1980) that employees as well as students of public educational institutions are protected from discrimination on the basis of sex under Title IX. Because of *Cannon,* educators were protected from sexual harassment as well, after the Department of Education issued a memo in August, 1981, regarding sexual harassment against anyone protected by Title IX. In that memo to the Regional Civil Rights Directors, OCR Regions I-X, the OCR Director of Litigation, Enforcement and Policy Service explained the application of Title IX to sexual harassment, which is based on the fact that "such conduct constitutes differential treatment on the basis of sex."

Employees may also file complaints under Title VII of the Civil Rights Act of 1964, as noted above. However, if monetary damages are the goal, a complainant might want to explore filing under Title IX, because there are monetary limits to damages awarded under Title VII. There are no monetary limits on the damage which one can demand, under Title IX (schools and colleges take note!). Of course, filing for monetary damages is a long, costly process that may not result in awarding of damages to complainants.

I have provided expert testimony about Title IX in cases in which several former students filed civil suits against school districts for damages to compensate them for continuing trauma caused by sexual assault by a teacher when they were students. The school districts held that, when administrators received actual notification from the students or their parents of the behavior by their employees, they acted swiftly to investigate, dismiss, and report the teachers, who in all cases had their teaching licenses revoked. In at least one case, the plaintiff was successful in winning a significant amount of money from the district. In others, the cases were dismissed by the judge because they turned on very specific points of law or the culpability of the district could not be proved by the known facts. The situations were deplorable and the schools acknowledged the assaults, but they fought the damage claims and their protests were successful when the judges threw out the cases. Each case took months if not years to resolve, and involved dozens of depositions, months of attorney time, and incalculable emotional capital. Even situations that clearly appear to be wrong do not always win monetary damages. What is gained, however, is another step on the road to awareness.

Policy and Procedure Requirements of Title IX. Title IX regulations require that each recipient of federal funds (i.e. a school or college) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to the school or college alleging its non-compliance with Title IX or alleging any actions which would be prohibited [§ 106.8(a)]. The regulations also require that schools notify all its students and employees of the name, office address and telephone number of the employee or employees appointed to this role. Who is assigned that role in your school?

In addition, schools must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by Title IX, including sexual harassment [§ 106.8(b)].

Title IX regulations do not require a separate policy or complaint procedure that address the single issue of sexual harassment, but because of the complexity of the topic, equity professionals generally recommend a sexual harassment policy in addition to the regular Title IX policy and procedures. A separate policy allows for specific and sensitive strategies and procedures that may not be necessary when dealing with a non-sexual issue of discrimination; for example, a sexual harassment complaint procedure may require that the school assign female-male teams to investigate allegations of sexual harassment, or mandate that all new employees learn specifically about sexual harassment, neither of which would be necessary under other areas covered by Title IX. See "Elements of a good sexual harassment policy," Chapter Three.

Title 42 of the U.S. Code, Section 1983 protects students and employees against infringement of their rights under 13th, 14th, and 15th Amendments to the U.S. Constitution. It covers those categories or characteristics protected under Title VII of the Civil Rights Act of 1964: race, color, sex, religion, and national origin. The law prohibits persons "acting under color of state law" from depriving individuals of any right secured by the U.S. Constitution where the employee was the final policy-maker or acted in a pattern of customary practice, with "deliberate indifference" to the plaintiff's rights. This is where the controversial concept appears that may find schools negligent when they had "actual" knowledge ("knew") or "constructive" knowledge ("should have known") of the harassment and failed to act.

U.S. Department of Education Office for Civil Rights Sexual Harassment Guidance: Harassment of Student by School Employees, Others Students or Third Parties (hereafter known as Guidance). Published in the Federal Register on March 13, 1997 after extensive drafts, requested comments, and revisions, the Guidance provides information intended to enable school employees and officials to identify sexual harassment and to take steps to prevent its occurrence. It is intended to inform educational institutions about the standards that should be followed when investigating and resolving claims of sexual harassment of students, either by school employees or peers. The Guidance applies to students at every level of education.

The Monthly Bulletin published by Thompson Publishing Group in May, 1997, summarizes the key provisions of the Guidance as follows (pgs. 8-9):

- "Title IX's prohibition of both quid pro quo sexual harassment and hostile environment sexual harassment does not extend to legitimate non-sexual touching or other non-sexual conduct, such as a coach hugging a students who make a goal or a kindergarten teacher's consoling hug for a child with a skinned knee.
- "Title IX's protection extends to both male and female students.
- "Title IX prohibits sexual harassment regardless of the sex of the harasser. Thus, even same-sex sexual harassment is prohibited.
- "Although Title IX does not prohibit discrimination of the basis of sexual orientation, sexual harassment directed at gay or lesbian students may constitute sexual harassment prohibited by Title IX.
- "Agency principles are applied to the sexual harassment of a student by a school employee in a position of apparent authority, making a school liable for such conduct, or by one who is aided in carrying out the harassment by his or her position of authority with the school, regardless of whether it knew or should have known of the harassment. However, a school is liable under Title IX for the sexual harassment of one student by another student only if a hostile environment exists in the school's programs or activities, the school knows or should have known of the harassment, and the school fails to take immediate and appropriate corrective action. The sexual harassment of students by third parties may result in school liability similar to that imposed for peer harassment, but such liability is dependent upon the level of control the school has over the third party harasser.
- "Schools must adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and disseminate a policy against sex discrimination. A school violates this

requirement of Title IX if it does not have those procedures and policy in place, regardless of whether harassment occurred.

- "Although a school's policy and procedure must meet all procedural requirements of Title IX and apply to sexual harassment, a school does not have to have a separate policy and procedure specifically addressing sexual harassment as long as its nondiscrimination policy and procedures for handling discrimination complaints are effective in eliminating all types of sex discrimination.
- "A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities. All students must be notified of the name, office address and telephone number of the employee or employees designated.
- "Grievance procedures should accord due process to both parties involved while ensuring the Title IX rights of the complainant. However, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.
- Conduct may be viewed by OCR as "unwelcome," and thus constituting harassment, even where there is acquiescence or occasional participation by the student. OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.
- "With regard to alleged "consensual" sexual relationships between a school's employees and its students, OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that such conduct was not consensual.

- "In determining whether conduct of a sexual nature is sufficiently severe, persistent or pervasive as to create hostile environment sexual harassment, all relevant circumstances should be considered, including: the degree to which the conduct affected one or more students' education; the type, frequency and duration of the conduct; the identity of and relationship between the alleged harasser and the subject of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and context in which they occurred; other incidents at the school; and incidents of gender-based, but nonsexual, harassment.
- "A school has actual notice of sexual harassment if an agent or responsible employee of the school receives notice. A school can receive notice through someone other than a managerial or designated employee. Factors such as the authority actually given to the employee and the age of the complaining student will be examined in determining whether it is reasonable for a student to believe the employee is an agent or responsible employee.
- "Constructive notice of sexual harassment — through which a school would have been aware of harassment if it had made a "reasonably diligent inquiry" — is sufficient to create liability, even if a student did not file a complaint.
- "A school is required, as soon as it has notice of possible sexual harassment of students, to take 'immediate and appropriate steps to investigate or otherwise determine what occurred and take steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.' In certain circumstances, a school will also be responsible for taking steps to remedy the effects of the harassment on the individual.

- "If a student reporting harassment asks that his or her name not be disclosed to the harasser, the school should explain that this request may limit the school's ability to respond effectively to the complaint. If the student continues to request confidentiality, the school should take "all reasonable steps" to investigate and respond to the complaint consistent with that request as long as doing so does not preclude the school from responding effectively to the harassment and preventing harassment of other students."

By January, 1998, three federal Circuit Courts of Appeals (5th, 7th, and 11th Circuits) had issued opinions that contradicted the OCR Guidance and took more narrow views of the responsibility of the schools under Title IX. OCR Guidance asserts that, as under Section 1983 complaints, school districts may be held liable if "they knew or should have known" of the harassment of students by peers; however, complainants in the 5th, 7th, and 11th Circuits will be required to show that the schools have actual first-hand knowledge of the harassment through complaint, educator report, or other official means. The result is that, at least in those federal circuits, the possibility of recovery of monetary damages for sexual harassment in schools is more limited for the complainant.

State Law Prohibiting Sexual Harassment. Most states prohibit sexual harassment in employment and education, but differ in the elements of policies and procedures they require. The chart in Appendix A outlines protections and policy requirements for each state.

Implementing the Law: Commonly-Asked Questions

Knowing what the actual words of the law are and implementing the law in a school are two very different things. In this section, the emphasis is on practical application of the law. Even if the law does not actually say exactly what schools must do to meet the letter of the law, there ar reasonable actions a school can take to create conditions that prevent sexual harassment. From a strict liability standpoint, it is to the school's advantage to undertake multiple prevention measures and document them. From a student and parent perspective, the more a school does to make the student's learning environment safer and more conducive to learning, the more the student or parent will understand that the school is committed to the student's success.

In this section, we will address those questions that are often asked as school personnel begin to sort out what needs to be done to prevent, intervene in, and investigate sexual harassment.

What does harassment look like?

Sexual harassment can be verbal, physical, even graphic. It can be a sexual joke, a lingering leer at someone's breasts or crotch, or a naked man on a calendar in the work room. It can be repeated comments about one's physical attributes or brushing against one's body in a sexually seductive way. It can be clearly illegal assault as well. The New Jersey Career Equity Assistance Center in New Brunswick, New Jersey, lists the following behaviors as examples of sexual harassment: touching or grabbing, being the target of sexual rumors, being brushed up against in a sexual way, sexual remarks or suggestions, conversations that are too personal, pornographic pictures or stories, unwelcome whistle, gestures or noises, dirty jokes, obscene pictures, offensive displays of sex-related objects, or mooning or flashing. Pat Callbeck Harper (1996) has designed a helpful diagram which lists many types of harassing behavior (Chart 2B).

Who is protected under the laws that prohibit sexual harassment?

When the EEOC guidelines were first issued, nearly everyone knew that they applied when men harassed women; we learned that men were protected from harassment by women as well, since both men and women are

SEXUAL HARASSMENT

A Continuum of Unwanted Sexual and Gender-directed Behavior Patterns

VISUAL	VERBAL	WRITTEN	TOUCHING	POWER	THREATS	FORCE
Ogling, Leering	Request for Dates	Love Letters or Poems	Violation of Space	Retaliation	Quid Pro Quo	Attempted or Actual Rape
Staring	Very Personal Questions	Obscene Letters	Patting, Rubbing	Using Position to Request Dates or Sexual Favors	Demands	Attempted or Actual Assault
Posters, Cartoons	Lewd Comments	Cards, Notes	Pinching	Gender-directed Favoritism or Disparate Treatment	Conditioning of Grades or References for Sexual Favors	Pantsing
Graphics	Dirty/Sexual Jokes	Graphics	Bra-snapping	Hazing Rituals	Retaliation for Refusal to Comply with Requests	Stripping
Magazines, Flyers	Whistling, Cat-Calling		Caressing		Loss of Job or School Position	Extreme Forms of Hazing
Pin-ups	Obscene Calls		Blocking of Movement		Loss of Promotion	Stalking
Gestures	Sexual Rumors		Kissing			Sexual Abuse
Mooning			Groping			Physical Abuse
Flashing			Grabbing			
			Hazing			

OFFENSIVE CONDUCT (*may be illegal*) DEMANDS (*illegal in all cases*)

HOSTILE ENVIRONMENT (*if severe and pervasive*) QUID PRO QUO (*once is enough*)

Axions from Susan Webb: The less severe the form, usually the more it needs to be repeated before it is illegal sexual harassment. The more severe the form, the less it needs to be repeated before it rises to illegal sexual harassment form the perspective of the reasonable victim.

Adaptation for educational settings by *The Harper Consulting Group* from sexual harassment training materials developed by GENERAL ELECTRIC in "Sexual Harassment: It's No Game" by the Center for Women in Government, Albany, NY. Axioms adapted for educational settings from Susan Webb's "Shades of Gray" sexual harassment program.

protected from sex discrimination and sexual harassment is generally a form of sex discrimination. The same applies to boys and girls in schools who are protected by Title IX and the OCR Guidance.

But what about same-sex sexual harassment? In *Oncale v. Sundowner Offshore Services, S.Ct. No. 96-568, March 4, 1998,* the U.S. Supreme Court unanimously held that same-sex harassment in the workplace is prohibited by federal civil rights law. Legal experts agree that the ruling has implications for schools: same-sex harassment is not permitted, so schools should ensure they respond to it. (Monthly Bulletin, p.7).

The OCR Guidance is explicit in prohibiting same-sex sexual harassment against students, either by other students or by adults. Verbal and physical harassment perpetrated by students or school employees who use sexual orientation as a way to ridicule or harm others, is prohibited.

What about harassment perpetrated because of factors other than sex or sexual orientation? We all know that there is plenty of harassment in schools because of race, color, religion, language spoken, or disability. While people are protected from discrimination on all these bases under federal law, there is little guidance on harassment based on them. Courts have not as a matter of course applied the EEOC guidelines on sexual harassment to racial or other harassment. It will probably happen, but there is nowhere near the same clarification and definition by federal courts, agencies, or commissions.

Who can be harassed? As mentioned earlier, we often think that sexual harassment is only behavior that is perpetrated on adult females by adult males. Early data collection confirmed this pattern, which reflects the regard and status of women in some areas of our society. However, harassment of a sexual nature occurs between women and men, women and women, men and men, female student and male student, coach and player, student and teacher, veteran teacher and new teacher. Students can be responsible for a hostile environment for a teacher, though courts would first look at what the teacher did to control the situation and what the school's administration did to stop the student's repeated or serious sexually harassing behavior.

Data collected in the 1990's indicate that although most of those reporting sexual harassment are girls, boys also experience significant sexual harassment in school (AAUW, 1993; Lee, et. al., 1996; Thompson, 1997). Reported incidents for both have increased with each study. At the beginning of this book, for example, I mentioned that the phone calls I received regarding sexual harassment increased from a handful to 250 to 1300 in the two years following Clarence Thomas' confirmation hearings for the Supreme Court.

I suspect that as our society becomes more equitable, we will see harassment by both men and women against both men and women before we truly become equitable and stop harassment altogether. The end of this by-product of inequality can't come soon enough for many of us. See Chapter Three for more discussion of gender inequality as precursor to sexual harassment.

Allegations of sexual harassment can be made against students of any age, as well. A large percentage of the calls I received concerned elementary students, to my surprise. Initially, a school employee probably would not label the behavior by a young perpetrator as illegal sexual harassment, using a variety of means to stop the inappropriate behavior. However, if the behavior persists, intensifies, is encouraged by the perpetrator's parents, or is assaultive, school districts may want to encourage parents of young targets to implement the school's sexual harassment complaint procedure.

Who harasses? We cannot establish a typical "profile" of a harasser. Most often, harassment is perpetrated by someone who seeks power over another person. Sexual harassment is not an expression of sexual attraction. If I were attracted to you and wanted you to be attracted to me, why would I embarrass, humiliate, or intimidate you? The only time I might do that is when I act as a child and have not developed appropriate skills for showing friendship and attraction.

We can collect data, however, on those most frequently accused of sexual harassment and abuse. Mary Jo McGrath, in her periodical newsletter (Winter, 1997) states that among male teachers, those who are most often implicated are those teachers who have the opportunity to be alone with students or work with them one-on-one. Those include music or drama teachers, coaches, and special education teachers. These teachers also work in areas in which there is more opportunity for touch than those available to the average classroom teacher. Harper (1996) lists several reasons why coaches need to be especially careful:

- Travel sets up risky situations in which students are less supervised
- High physical contact may be prevalent, often combined with low supervision
- Locker rooms provide risky climates
- Competitive situations may set up harassing of other teams and own team members
- Large numbers of volunteers/young staff provide coaching; because they are not under contract, they may not have the experience or training to notice and stop sexual harassment and assault

An additional caution concerns harassment based on actual or perceived sexual orientation. In many male athletic programs, a heightened emphasis on stereotypic displays of masculinity fosters ridicule of those who do not meet the "standard." Common sexually-harassing name-calling includes "faggot," "queer," "lezzie," or "Ellen," a new name that has emerged to disparage alleged homosexuality in schools since the comedian Ellen DeGeneres declared her sexual orientation.

Men also must deal with the stereotypical expectation that they are more sexually active, more likely to be "turned on" by an attractive woman or girl, and less accountable for their behavior than women. Although current data indicate that more men and boys harass and abuse than girls and women, obviously the majority of males are not harassers.

McGrath says female harassers defy "profiling." This may be one place where prevailing stereotypes favor women. After all, women have long been expected to be motherly and protective of children, so we tend not to have negative expectations for their interactions with youngsters. Nonetheless, women have been found guilty of sexual harassment under the EEOC guidelines, and female teachers have lost their jobs because they initiated sexual relationships with their high school or middle school students.

It is important to keep in mind that just because an educator falls into one of the categories or school roles listed above, he or she should not automatically be suspect. One cannot generalize to entire populations for any reason.

Are all employees of a school district responsible for preventing sexual harassment when they see it? While strict liability for sexual harassment falls most heavily on school administrators, I always say in my workshops with teachers, support staff, cooks, custodians, and bus drivers that all employees must take responsibility for stopping sexually harassing situations. I ask participants to imagine a situation in which a student alleges that other students harassed her verbally and physically in a class. While the comments were loud and the behavior raucous, the teacher did nothing. It makes sense that the first question the parents will ask is "What did the teacher do to stop the behavior?" If I were that teacher, I'd rather have a record that included the date of the incident, who was involved, and what I personally did to intervene, even if it was only to send the offending students to the office to be reprimanded.

How can we determine illegal sexual harassment? Often, when learning about the definition of sexual harassment for the first time, educators fear that any inadvertent behavior may be misinterpreted as harassment, and any disgruntled student may make accusations against a teacher in order to retaliate for a bad grade. It is important to note that, while false accusations are sometimes made, there are many factors to consider. When determining whether a particular situation is an example of sexual harassment, investigators cr the courts look at the total situation when making a decision. Investigators may take into consideration events leading up to the accusation, the age of the target and the age of the alleged perpetrator, the positions of power each holds, the frequency of the offensive behavior (did it happen repeatedly or just once?), the severity of the behavior (was touching of intimate body parts involved, or was it "merely" a sexual joke?), and whether a "reasonable person similarly situated" would find the behavior offensive. While it is important for educators to monitor their own behavior to make sure they are not inadvertently harassing anyone in a sexual way, it is equally important for educators to know that an appropriate process should be followed, with all sides heard. Those accused have due process rights which should help protect them from frivolous allegations.

A highly publicized example of alleged sexual harassment was reported between a first grade girl and boy. According to what the public learned in the media, the little girl asked her friend, the boy, to kiss her. He did. Adults in the school named that kiss as sexual harassment and as punishment prohibited the little boy from attending an end-of-the-school-year field trip. His parents protested to the media as well as the school, and outrage ensued across the nation. Much of the indignant anger was directed at government guidelines—and a school—that would label such apparently innocent behavior as actionable sexual harassment. Would you label this behavior sexual harassment?

Let's examine this incident in light of what we have learned. We can ask ourselves the following questions:

- How old is the alleged perpetrator and the target of the behavior? (Both in first grade)
- Should age be a factor here? (Probably)
- Are the two people involved of equal or near-equal status? (Yes: both are first grade students; even though girls may have less power than boys in our culture, they seem to be friends and equals)
- Did the behavior in question happen once or many times (just once, apparently)

- How severe was it? (Not very; there was no force or violence involved and no touching of intimate body parts, for example)
- Would a reasonable person similarly situated find the behavior offensive? (We don't know the answer to this, but we can make assumptions and test them out)

First, we must acknowledge that all we know is what we have learned through the media. Many times this is not the entire story, but let's assume that we have all the facts. We must weigh *all* the facts in order to make our decision. Is this behavior something that is prohibited by law? I would say probably not, given the facts as we have them.

More specific information on how to determine illegal sexual harassment may be found in Chapter 4 in the discussion of investigation of complaints.

What must we actually do to meet the letter of the law? As we have seen, to be in compliance with Title IX, schools must name an employee to receive complaints, adopt and disseminate policies prohibiting discrimination and harassment, and make a complaint procedure available to those who may want to file complaints of sexual harassment (or discrimination). When a school district adopts a policy that says sexual harassment will not be allowed in the school's programs or practices, the implication is clear that the school must implement procedures, provide definitions, train staff, and monitor behavior. School personnel must be prepared to intervene in sexually harassing situations, investigate complaints, and teach students about sexual harassment. None of these last actions are laid out specifically in the law, but in order to uphold the law, schools must have procedures that implement it. The details are left to the schools' discretion, depending on what is needed in individual schools.

In many cases, sexual harassment is in the eye of the beholder. What is offensive and clearly harassment to you may be obnoxious but tolerable behavior to me. Let's say I've been a teacher in the same school for 17 years, as has "Bob." Bob has told the same obnoxious joke about his mother-in-law's sexual practices for many years. It's stupid, I'm disgusted by it, but I have listened to it without comment (or with a weak, "Oh Bob, stop it. Ha, ha.") for years. This year, the staff took part in a workshop on sexual harassment on the first day of school. Alice, who has been a teacher in the school for two years, speaks up the next time Bob tells the joke. "I find that joke to be very offensive and I think you should stop telling it," she says.

Bob rolls his eyes and snorts. One of his buddies, the social studies teacher, says, "Come on, Alice. Bob has been telling that joke for years and no one has objected. You're not so clean and pure yourself either." Alice insists she has a right to ask Bob to stop telling the joke, and could even file a complaint about it. Alice is correct.

What is "third party sexual harassment?"

A teacher filed a complaint against her school district when she allegedly observed another teacher, her colleague, having sex on the floor behind the desk in the second teacher's room. It was after school, and the colleague was accused by the complainant of carrying on a secret affair with the man who delivered mail between school buildings. The two involved in the alleged affair, although never admitting to it, would presumably have been willing participants in the sexual encounter, so the behavior was not unwanted for them. However, it was unwanted by the teacher lodging the complaint, who alleged that she was forced to experience an offensive situation as part of her work environment.

The EEOC definition of sexual harassment begins with the words "unwanted behavior of a sexual nature." In the case above, the two employees engaged in the alleged affair were engaged in behavior that was wanted by both. The harassment has not yet occurred. However, when another teacher, the "third party," observed behavior which made her work environment offensive, she had the right to file a complaint, which was then investigated.

What would have happened if the first teacher had never observed the incident? Was it appropriate for the teacher and the delivery man to be having sex on the floor in the teacher's room? Absolutely not, but inappropriate because of professional, not legal standards defined under sexual harassment prohibitions. In addition, the school district has the right to prohibit behavior that may not also be prohibited by law and therefore may prohibit consensual relations between employees or employees and students.

Sexual harassment or sex discrimination? Because sexual harassment is most often a form of sex discrimination, it is sometimes difficult to tell them apart. One reason to ascertain the difference between harassment and discrimination may be to determine the process that is chosen to investigate the incident, the people to involve, and the attention to the target's well-being. While it is important to investigate allegations in any complaint, there may be a more critical reason to quickly investigate an allegation of sexual harassment with a great need to protect the complainant from retaliation or continued harassment or assault.

Sexual harassment includes an element of sexuality, such as comments about the target's body, having sex with him or her, or even touching what we normally consider "private" body parts: breast, buttocks, genitalia. Sexual harassment may include graphics, such as posters that contain sexually offensive subtle or overt messages. Allegations of sexual harassment can be very subjective, depending on the values of the complainant.

Discrimination on the basis of sex includes different treatment of students or employees of one gender when compared to treatment of students or employees of the other gender when they are in similar situations. It may or may not involve elements of sex or sexuality, but may include differences in gender that are established by a person's culture rather than by a person's biological sex. It may involve different expectations for roles men play as compared to expectations for roles women play. For example, we may excuse obscene remarks by boys because "boys will be boys," but severely reprimand girls for making similarly offensive remarks, since we expect girls to be "ladies." Sex discrimination often results in different outcomes by gender, such as different salaries, promotions, or job assignments in the workplace, or different course choice, participation in classroom activities, discipline, or treatment by teachers in schools.

When does sexual harassment become sexual assault? Sexual assault laws vary by state, but in general one can say that when sexual comments become physical contact that is unwanted or inappropriate (such as between teacher and student), there is real danger of violation of sexual assault laws. For example, in Wisconsin, state statute names the actual body parts that one may not touch, even through clothing; if these parts are touched, the target may allege sexual assault, which includes four degrees, each more serious depending on the age of the target and the type of physical contact.

In cases of alleged sexual assault, school personnel often request investigation by local police, since criminal misconduct is likely to be involved. Police involvement in criminal situations does not absolve schools of their responsibility in investigating civil or procedural violations, however.

In this chapter, we have examined the relevant laws and regulations that guide our interpretation of behaviors that may be sexually harassing. It is evident through review of the law that a dramatic change has taken place in what our society expects and prohibits in interpersonal relationships. Expectations for school employees have changed in a relatively short time. In the next chapter, we will explore how school services personnel can help prevent and intervene in harassment in schools.

Chapter Three

Student Services Practice:

What You Need to Know to Prevent Sexual Harassment and Assault

Student services professionals are often the first people who learn that a student is being harassed. Students frequently let counselors know about harassment before they even know what to call it. Often, they ask that nothing be done; they "just want someone to know" but are afraid of retaliation if the school intervenes.

Counselors tell me, however, that they may learn about the abuse or harassment of their student clients only by chance, because so many students these days take sexually harassing behavior for granted. It lurks as a subtext in many, many interactions between students. It is a part of the banter that some teachers engage in with students, part of adults' trying to prove they "are real people" and are "in on the know" about their students' cultures. The on-going presence of sexual banter only serves to make it a part of the landscape that is absorbed by students. Students may see adults taking part in sexual banter in school, so it appears to them to be acceptable.

In order to compel students to come to a counselor, school social worker or school psychologist, it seems that they must experience as nearly unbearable what has been happening to them. Some students may even be suicidal; most are frustrated and feel helpless. (AAUW, 1993; Keyes, 1997.)

Because student services personnel are often uniquely involved in cases of sexual harassment, it is important that they are informed about what they can do:

1. to prevent sexual harassment;
2. to report sexual harassment; and
3. to protect themselves from allegations.

This chapter will address those issues from the perspective of the school counselor, social worker, psychologist, and other student services personnel.

Prevention strategies

Efforts to prevent sexual harassment in schools must turn from putting out the fires caused after an incident takes place to focusing on prevention of harassment in the first place. No one strategy will do the trick; it will mean trying lots of things until we figure out the best combination. It is important, however, to keep in mind that sexual harassment is the result of systemic expectations and structural mechanisms that support this type of behavior. Individuals act on what the system encourages them to act on. To succeed in preventing sexual harassment, we need to examine and change the systems that allow it to happen, starting with looking at how our culture has structured gender relationships. I must tell myself constantly that it's the system, that is the source of inequities and allows individuals to play out the inequity in discrimination and harassment. In the long run, we must change the system. Having said that, however, I will provide some strategies for prevention that we can take immediately.

Examining Our Expectations for Girls and Boys

We live in a culture that is a hotbed for the growth of sexual harassment. Whenever one group of people (women and girls, this case) is valued differently than another (men and boys), expectations and treatment differ by group. This is not to say that any one individual woman or girl is not treated with equality; many are. However, as much as our sex role expectations have changed in the last thirty years, there continues to be lingering disparity. Many of the manifestations of this disparity are precursors to sexually harassing behavior.

One can observe differential expectations in the media, in the workplace, in schools and in the family. The public repetition of role stereotyping and negative limitation can sometimes seem overwhelming.

The results of that disparity in expectations are easy to tabulate. For example, in schools, look at who is expected to support athletes through cheerleading, booster clubs, decorating lockers, preparing food. In general, it is girls who most often perform these tasks for boys. As another example, ask what classes students choose. Are there lingering gender imbalances in class enrollments, particularly in advanced math and science classes, selected family and consumer education classes, and some industrial technology courses? Research from the 1920's to the 1990's document differential treatment for girls and boys in the classroom (for a summary, see Generating Expectations for Student Achievement, 1997).

An ancillary characteristic that is influenced by expectations for rigid sex roles is sexual orientation. When little boys are called "sissy" and little girls are called "tomboy," it is because they are behaving counter to what is expected by our society for their sex. As those children get older, the name-calling may become more pointed and often painful, sometimes turning to physical attacks, as we try to force people into the roles we have designed for them. Gay, lesbian, bisexual and transgender students report verbal and physical abuse in middle and high schools across the country. Other students who are not homosexual may be targets of this type of harassment because of others' misperceptions of their sexual orientation. In either case, because of the Office for Civil Rights "Guidance," that type of harassment is now suspect and may be illegal.

Counselors can help eradicate negative effects of sexism by examining their own expectations for students, reviewing materials they use for course enrollment and career information, and ensuring that they do not treat students differently based on gender or sexual orientation. If they are involved in securing placements for senior vocational students, counselors can make sure that the agreement signed between business and student includes assurances that sexual harassment and assault will not be tolerated in the workplace.

To really get rid of sexual harassment in schools, and in our society, we must equalize relationships between women and men, boys and girls. We must recognize that students of all sexual orientations are welcome and deserving of education in our public schools. The effort will involve all adults connected to the school: counselors, other pupil support staff, teachers, administrators, secretaries, cooks, custodians, bus drivers, parents, businesses that place students in capstone vocational placements. Elimination of sexual harassment in schools requires nothing short of a social revolution that will change all our operating systems. It is clear to me that we can do it. Remember that people were not born harassers or abusers; they learn the behaviors from someone else. They can unlearn them.

To paraphrase the late educator, Ron Edmonds, we already know what we need to do to make those changes. What is lacking is the will to do it.

In the meantime, I have included some stop-gap measures schools can take to help reduce sexual harassment and assault.

District-wide and school-based policies

During the early years of my classroom teaching experience, there would be occasional dreaded work days when the faculty would be required to write policies. Few of us could understand why we wasted the time; in our experience the policies were written, perhaps adopted by the school board, numbered and put in a huge black ring binder that was kept in the principal's office in each school building. None of us ever looked at them again.

Now, however, I understand why policies are important. I've worked in many schools and with many administrators, and I've seen good principals use policies to head off disaster, provide guidance in complex situations, educate teachers and parents about the law, and help students and teachers recover from traumatic events.

People working in schools sometimes resist or avoid developing policies addressing sexual harassment, abuse and assault because schools are supposed to be safe places where adults care about children. It is unthinkable that bad things can happen to children in schools, so it is difficult to even think about them. In nearly all school situations, schools are safe for students and the people who work in them. However, in a few cases, unexpectedly bad situations can occur and having a procedure in place makes it far easier to reverse negative effects. In those situations, adults are sometimes too shocked to think clearly, and having a policy saves some effort and smoothes the way.

> *In an elementary school in a small school district, a young male teacher in a first grade classroom was accused of fondling little girls as he held them on his lap. Some of the girls told their parents, who rushed to the school. The teacher was suspended with pay while an investigation took place. Fairly soon, the media learned of the incident and converged on the superintendent. Community members were alarmed and demanded assurance that this incident would be dealt with. The superintendent, though besieged on many sides, was able to follow the procedures that the school board had adopted for such situations but hoped never to have to use.*

In this case, the school district had a policy that told them what to do if a teacher was accused of a crime, and the superintendent and the board were able to follow a procedure without having to design one or think about what to do next.

> *Criminal charges were filed against the teacher as a result of the investigation. He eventually pled guilty and was incarcerated, losing his teaching license. The effect on the rest of the school community was profound. Parent confidence in the schools was shaken for a while; when teachers led their daily lives in the community, people would ask them, "What's going on in those schools, anyway?" Everyone working in the schools was shocked, embarrassed, and ashamed that one of their own had so betrayed the trust they had built up over decades. The employees of the school needed the services of a trauma team to help recover. The little girls received counseling.*

The district administrators knew exactly what procedure to follow when the incident happened, but they did not have a procedure that outlined what to do to recover from the devastating blow to the school's reputation and teachers' confidence and good feelings about their profession. Unfortunately, a recovery plan is as necessary these days as a plan to deal with initial allegations. School services personnel are uniquely experienced to insist that a school have policies, procedures and practices in place.

Developing a good sexual harassment policy. Most equity consultants advising schools on policy list several essential components for a district policy prohibiting sexual harassment in schools. I recommend the extensive list published in the *Educators' Guide to Controlling Sexual Harassment* (Thompson, 1996), which includes some twenty-two elements. Most consultants suggest that a school policy list behaviors that will constitute sexual harassment in that school/district, include a legal definition of sexual harassment, outline consequences for engaging in prohibited behavior, and provide information on how to file a complaint (the details of which may be published in an attached procedure or rule). I always emphasize that the policy should include clauses that prohibit false charges and retaliation against those filing complaints.

Based on recent cases I have been involved in, I believe it is necessary to have a plan to help those left to deal with the many traumas that can unexpectedly occur in schools, such as suicide, accidental death of an adult or child, violence, and sexual assault or pedophilia.

A sample sexual harassment policy is included in Appendix C.

Adopting policy to clarify that sexual harassment is unacceptable, however, is only part of the solution. Policies can be helpful as a direction for pointing the way, but school employees must pay attention to how the policies are interpreted and implemented, if the complaint procedures are workable, and if the school is able to use the policies to help prevent harassment and create safe, caring environments for both children and adults.

Staff development

Educators need to know about the laws prohibiting sexual harassment and assault, but they also need to address the source of those problems: gender inequities in our society that result in different expectations and treatment based on gender. Both topics must be addressed for effective prevention of sexual harassment over the long term. Processes must be put in place that enable people to discuss their values and prejudices and to heal from unforeseen hurts. Counselors, school psychologists, school social workers and teachers are products of a culture that is only beginning to eradicate sexism. We need safe places to discuss the changes that society is going through. Changes in behavior need to be grounded in caring and understanding, rather than fear of punishment. The traditional place for that to happen in schools is staff development workshops.

General guidelines for effective programs. Schools have many, many issues to address, and time for all staff development is often relegated to one or two days scattered throughout the school year. Time allocation during those days is at a premium, and schools often ask me to "come in and talk to the staff (or students) for forty-five minutes" because that's all the time they feel they have. I can empathize with their dilemma, but I no longer agree to facilitate those short programs, unless they are the kick-off to a longer, more concerted school-wide effort to change the systems in the school that promote sexual harassment in the first place.

If a school cannot commit to more than one session on prevention of sexual harassment for staff, a minimum time to discuss basic information is 2.5 hours. Two half-days would be ideal, with several days or three to four weeks in between for adults in the school to think about the concepts, observe behavior in their schools, and gather information for curriculum and parent programs which they can bring to the second session for planning. See Chart 3A for a sample 2.5 hour agenda. Appendix D provides longer agendas and sample handouts facilitators may use for the workshops.

Chart 3A

Staff Sexual Harassment Training Awareness and Prevention

Agenda

Two and one-half hour session

Handouts: District sexual harassment policies; packet that includes newsletter format with definitions and related information, list of resources for training and teaching

(5 minutes)	• True-false test. Take at beginning of session; review at end
(10 minutes)	• Welcome: School representative Review of district sexual harassment policies Review of handouts Introduction of speaker(s)
(5 minutes)	• Overview of agenda/goals of the training (overhead)
(15 minutes)	• Why this topic? Rationale for the training Changing public awareness and expectations Legal issues Educational goals The scope of the problem and its effects
(30 minutes)	• Introductory video
(15 minutes)	• Definition of sexual harassment Federal and state definitions; employee and student Types of sexual harassment (quid pro quo and hostile environment) Examples
(30 minutes)	• Recognizing sexual harassment: Small groups Case studies
(15 minutes)	• How to intervene when sexual harassment occurs Colleagues Students It happens to you Others
(20 minutes)	• How to prevent sexual harassment Curriculum models Prevention strategies
(5 minutes)	• Summary and wrap-up Lingering questions Review true-false test answers Evaluation

For a workshop on awareness and prevention of sexual harassment for school staff, I find that the objectives for the workshop should include dissemination of information on the law and on school policy, on clarification of causes of sexual harassment, sharing of resources that are available for educators to use with students, and strategies educators and support staff can use to intervene to stop harassment. A sample list of objectives follows.

The objectives of the training session are as follows:

- to help participants understand what is and is not sexual harassment;
- to ensure that participants understand their rights and responsibilities under federal and state law and district policy and procedures on sexual harassment;
- to sensitize employees to the seriousness of sexual harassment and the potential consequences of it to themselves, the school district, and students;
- to provide intervention strategies that educators can use when they observe potential harassing behavior and to eliminate the causes of sexual harassment;
- to tell employees how to report problems related to sexual harassment; and
- to help educators use developmentally-appropriate curriculum with students to help prevent occurrences of sexual harassment.

A sample description to be used for the announcement of an awareness/prevention workshop is provided here.

> In light of recent court cases, educators have a particular interest in knowing about their responsibilities regarding attention to sexual and other types of harassment in schools. This session will provide a brief overview of state and federal law, current cases (including negligence cases), and what might be done to prevent, intervene in, and investigate harassment. Resources for administrators, teachers and students will be available.

The most effective workshop on sexual harassment includes time for participant interaction and time for questions to the facilitators. To ensure participant engagement, I always use case studies for small group discussion (See Appendix G). These cases are from my own experience; facilitators may want to adapt details from their own schools. The cases always elicit solutions and questions. In addition, I always include a question for each case that focuses on long-term systemic changes to prevent future incidents of sexual harassment.

I like to provide handouts on the law, with a list of resources that educators can use with students. It is likely that most participants will not use the materials immediately, but I suggest they create a file so they know where to get the information when they need it or can modify curriculum to include information for students.

If there is time, I use a video that will illustrate examples of sexual harassment (see "Resources Your District Can Use Right Now"). Sometimes, however, the discussion is more important and I eliminate the video.

As I have mentioned before, teachers are often not aware of the time that pupil services personnel spend on sexual harassment, assault, and abuse incidents in schools. A workshop should include information about the frequency of incidents in that school and general information on the types of incidents that are happening.

Environmental Assessments

One of the best ways to prevent sexual harassment is to complete periodic assessments of your school's environment. The most effective method, in my opinion, is to ask a schoolwide team to develop a process for site evaluation. The format can include indicators that will let the assessors know if there are any problematic situations. Some of the indicators could be:

- expectations for girls as compared to boys;
- treatment by gender by adults in the school;
- number of complaints received alleging sexual harassment;
- number of times sexual harassment is raised in counseling sessions;

- comments overheard in hallways, classrooms, and at extracurricular activities;
- qualitative evaluation of general relationships between girls and boys, men and women.

Membership of an assessment team could include students, parents, and staff from all aspects of the school program, including cooks and custodians. The team might gather data through: observation in hallways and classrooms; surveys; focus groups of students, teachers or parents; review of policies and procedures and their implementation.

Staff evaluations

Most schools have periodic staff evaluations by administrators. While the evaluations are usually based on classroom or program observations and focus on teaching or counseling methods, other factors can easily be built into the evaluation process. For example, the principal may observe the employee's specific interaction patterns with students, watching for different treatment of boys as compared to treatment of girls, or comments meant to be funny that may border on inappropriate. The supervisor may keep information on complaints that are filed against an employee and use them as a part of evaluation as well, but remember that complaints should be investigated and verified in order to be valid for inclusion in a personnel file (See Chapter Four for more information on investigation of employees).

The school district should have a disciplinary policy for staff that includes progressive steps should allegations of sexual harassment or assault be lodged against the employee. An initial step for serious allegations should include leave with pay while an investigation ascertain facts. Remember that the accused has due process rights that take effect to assure fair response to the allegations.

Awareness activities for students

Students should be informed of legal prohibitions and protections against sexual harassment and assault. Because sexual allusions and behavior are so much a part of our culture, however, effective prevention activities must be repeated and long term, just like prevention activities for alcohol and other drug abuse that we undertake in schools.

The most effective program for students, I believe, is a pre-K-12 articulated curriculum that is age-appropriate at each level. Parents and other adult care-givers to the children in the classroom should be informed about the curriculum and its intent.

Even the youngest students can deal with this issue on some level; they can talk about "name-calling" and "good touch, bad touch," for example. In the primary grades, teachers and counselors can begin teaching the concept of "respect." While at this writing there are few curriculum materials for young students, one that is available for K-3 and 4-6 students comes from Minnesota, called "Girls and Boys Getting Along: Teaching Sexual Harassment Prevention in the Elementary Classroom" (Minnesota Department of Education, 1993). It is listed in "Resources Your School Can Use Right Now." The authors state in the introduction that the curriculum was developed in response to requests from educators, administrators and parents or guardians to address the increased sexually-offensive language and behavior seen and heard in the schools. They assert that "Much of the conflict between girls and boys in grades K-6 involves gender-based attitudes that include sexual stereotyping and teasing; however, reports of sexual touching and verbal abuse using sexually explicit language are increasing in even the youngest grades of elementary school children." (page 3) Their observation is consistent with the types of calls I received from 1992 through 1995 from parents and educators.

For intermediate grade students, see Nan Stein and Lisa Sjostrom's "Bullyproof: A Teacher's Guide on Teasing and Bullying for Use with Fourth and Fifth Grade Students." (Wellesley College and NEA, 1996). This curriculum includes activities that involve students in observing behaviors in their schools, writing about their observations and personal values, discussing laws, and brainstorming strategies for dealing with harassers.

Older students will benefit from Stein & Sjostrom's "Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools" (NEA and Wellesley College, 1994), and Susan Strauss' "Sexual Harassment and Teens: A Program for Positive Change." (Free Spirit, 1992). Both curriculums include student activities and age-appropriate strategies for helping students respond to harassing behavior. Both provide case studies and information on the laws preventing sexual harassment. The Stein and Sjostrom curriculum makes a concerted effort to integrate their approach into existing curriculum, and the Strauss curriculum includes extensive background and suggested teaching tips for adults using the material. I particularly like the activity called "Take a Closer Look, Be an Ethnographer" in "Flirting or Hurting," an activity that is adapted for younger students in "Bullyproof" as "On the Lookout! Be a Researcher in School."

Typical sexual harassment classroom strategies for all ages include means to integrate the material into existing curriculum goals and activities. They are most effective when students are engaged rather than talked to and when students are encouraged to think critically about the causes of sexual harassment in school. Strategies provided in theses resources empower students themselves to address harassing behavior.

Other strategies for informing students. Initially, in my experience, schools often try to stop sexual harassment by scaring students about the law. Principals still ask me to come to their school, where they will bring all the 7th and 8th graders, for example, into the gymnasium or auditorium and I can have 47 minutes to "let them know what they shouldn't do." In the early days, when few educators were interested in this topic, I took that opportunity. Not any more; I've discovered that it not only doesn't work, but it also may do more harm. A short workshop in which students are not allowed time to ask questions or feel bullied by the speaker does not provide time for adolescents to absorb the material and formulate questions. Students often leave with halfformed opinions and partial information on what constitutes sexual harassment. They may leave enraged ("How dare you tell me what I can do with my own girlfriend!") or confused ("You touched me! I'm filing a complaint of sexual harassment!"), without an avenue to clear up their misconceptions. They sometimes dismiss the entire topic as "stupid." You've heard them say it as they leave workshops.

Students need an environment that is more intimate and integrated, where they can ask questions and talk about their experiences. A school should plan for follow-up or supportive services for students who have been targets of harassment, abuse or assault. Ideally, the school should have already instituted a peer mediation or conflict resolution program that empowers students to stop harassing behaviors. Teachers should know what the facilitators are saying to the students so they can respond to questions after the program. Counselors and teachers can plan follow-up activities that take place in classrooms for several weeks or months after the initial meeting.

Many school districts have adopted brochures that outline the school's policy prohibiting sexual harassment and assault, with definitions, strategies for speaking out against offensive behavior, and identifying who to see in the school if they or their friends are being harassed. A good guide for teenagers is "Tune In to Your Rights..." distributed by Programs for Educational Opportunity at the School of Education, University of Michigan (See "Resources Your District Can Use Right Now"). This booklet can be purchased in quantity and disseminated to students; there is a place where students can write in the name of the school's complaint officer.

Some schools design their own posters describing prohibited behaviors which are placed in all rooms in the building. Others focus on positive behaviors they want to encourage on the poster. Some state departments of education, such as the Hawaii Department of Education, have designed and distributed posters (Sexual Harassment: It's Not Cool) to all schools in the state.

In one school district I have worked with, counselors, teachers and the school psychologist brought a sixth-grade class from every school in the district together for a one-day training. The classes then returned to their respective schools and worked with all the other sixth-grade classes in their school on prevention of sexual harassment. Peer training or conflict resolution strategies taught to students are also used to help students themselves monitor behavior in halls and on playgrounds.

Vocational education teachers need to be particularly attentive to prevention of sexual harassment and assault in placement settings. High school students who are placed in work-study or apprenticeship sites as part of their vocational curriculum are vulnerable to harassment because they are inexperienced and so concerned about making a good impression that they tend to accept any behavior toward themselves.

> *As a part of its school-to-work program, a high school places 12th grade students in local businesses for part of the school day. Placement is made without regard to gender, as legally appropriate. In one business that has been particularly supportive of the program, female students have reluctantly told tech education teachers at school that one of their supervisors is making sexual remarks to them (but not the males in the program) and they feel uncomfortable and "on guard" when at the worksite. They love the work and don't want to leave the site and they don't want the teachers to say anything. The teacher and counselor talk to the owner of the business, who meets informally with the supervisor of the students. The supervisor stops his behavior and does not retaliate; the students are lucky.*

The responsibility of the school is to protect the students; it cannot avoid addressing the issue with the business owner. At this point, it knows about the harassing situation the students are in and is responsible for improving that situation. However, the teacher and counselor are aware of the vulnerable situation of students and handle the discussion with the owner sensibly, sternly but without alarm or threats. To help prevent similar situations in the future, the counselor adds a clause to the agreement that both business and student sign prior to the placement which clearly states that discrimination or harassment are not allowed. In fact, a similar clause can be added to every contract agreed to by the school.

Reporting Requirements

When an employee of the school has knowledge of harassment in the school, he or she has a duty to report that information to a principal or other administrator designated to receive complaints about discrimination or harassment. Court cases to which I have been party have been decided on whether the school knew or should have known about the harassment or assault incidents.

> *A young male teacher made several sexual remarks to a female student in his class. When she eventually told her mother, the mother called the assistant principal at the school, who said he'd "take care of it." The mother heard nothing more.*
>
> *Meanwhile, a counselor overheard several female students recounting comments that the same teacher had made in class; the counselor felt they were inappropriate and spoke to the teacher's department chair about the comments.*
>
> *Another female student told her parents that the teacher had been signing her out of another class, during his planning period, and taking her to his apartment to have sex. The parents called the school, which did not respond until the parents filed an official complaint through a lawyer, nearly six months later. The case focused on the school's lack of response to all the incidents and whether it had actual knowledge of the harassing (and assaultive) acts of its employee. The time and money needed to deal with this case might have been avoided had the assistant principal or counselor formally reported the early incidents to the principal or complaint officer. The well-being of students and staff are assured when a school pays attention, takes harassing incidents seriously, and documents completely.*

School services personnel need to plan what they will do if they receive information about harassment in their school. Not every incident need be reported officially; decisions about reporting should be made after using professional judgment to weigh the magnitude of the incident, its impact on the student or adult reporting it, the frequency of the behavior, and the ages and positions of those involved. If in doubt, err on the side of reporting rather than not reporting. No matter how small the incident, however, I encourage school employees to document every disclosure brought to them that may be sexual in nature. The documentation may be a note on a private calendar, a memo to oneself for a file in a locked drawer in the office, or a file at home. A trusted colleague should know about the location of the files also. Include the date, names of those involved, and what you did as a result of hearing the information. If you are in charge of an investigation, please see Chapter Four for further information about documentation.

Protecting yourself from questionable situations

As I read the newspapers in the city where I live, I see stories about people working in schools who are accused of harassment, assault, "consensual" sexual relationships with teenagers, and pedophilia. In many tragic cases, the allegations true; the perpetrator often, rightfully so, loses his or her license to work in schools. In cases that are horrible for the accused, however, allegations are made that are unfounded. By the time the school employee is exonerated, his or her reputation unfortunately may be ruined.

Men seem to be more vulnerable to allegations of impropriety with children. After all, men working with small children are suspect because they are in non-traditional roles; women are perceived to be more maternal and caring with children. And we all know about the myth that men simply cannot control themselves around budding young women in high school. I have more faith in men than that; I think they can control themselves. Realistically, of course, there are more reported cases of men or boys harassing women or girls than the reverse. But I am sympathetic to the power that sex role stereotyping holds over our life and work choices, leading to expectations of illicit behavior. There are several things men and women can do to deflect allegations of impropriety. Chart 3B provides some suggestions.

As people who work with students in private locations, school services personnel have a great need to take precautions to avoid situations that might be open to question by the malicious, delusional, revenge-driven, or uninformed. A friend of mine who was once an elementary school counselor tells me that he took several precautions to protect himself in that job: he insisted that the school put a window in his office (the counselee could sit in the corner and not be seen by passersby but my friend was in sight at all times); he hurried to give 'high five's' to young children before they could throw their arms around his knees; he made sure he was never in a car alone with a child. He also referred to students by name or as "Pal," because colleagues and parents thought "Friend" or "Special Friend" was too charged a term.

Chart 3B

Do's and Don'ts for Educators and Others Working with Children and Young Adults

It seems insulting and overkill to tell professional educators and other adults working with children and young adults what they can and cannot do with their charges. However, a tiny number have been fired, lost licenses to work with children, or—worse—harassed and abused children for years without getting caught. In the 1990's, both parents and students are more aware of their rights in preventing inappropriate touch. Some are even aware that they can retaliate against teachers they do not like by filing charges of sexual harassment, abuse, and assault.

This list, while not exhaustive, is offered as a friendly reminder to protect those who work with children and the children themselves, who are vulnerable to sexual attention. We realize that nearly 100 percent of adults will never even contemplate the behaviors listed under "Don'ts." Some, however, may be scared or confused about what behaviors are appropriate these days; the "Do's" are offered as guidance. Touch is important, when used appropriately and when it is your style. Never attempt the behaviors listed under "Don'ts"!

You may find yourself in a situation that feels uncomfort-

Chart 3B continued

Do:

- Continue to touch students appropriately, if that is your style.
- Hug young students, or, if preferred, put out a hand for a handshake before they hug you.
- Be sensitive to students' reactions when you touch them. Some students, because of previous experience, do not want an adult to touch them at all.
- Develop a K-12 curriculum about this subject and adapt it to fit in your curriculum, no matter what you teach.
- Have a window put in your office door if you meet students there. Counselors can have students sit in the office where the student cannot be seen, but the counselor is visible.
- Teach girls to speak up for themselves, especially if someone treats them in ways they do not want to be treated.
- Treat students with respect.
- Use adult, not student, bathrooms & showers.
- Listen to your intuition if you feel that your behavior might be wrong, and stop the behavior.
- Develop a more extensive, site specific list.
- Inform substitute teachers and intern teachers about this list and district policies on harassment.
- Use caution if commenting on a student's physical attractiveness. Do comment on qualities other than appearance, and make sure you give positive comments about many good qualities to ALL students, not just one or a few.

Don't:

- Touch students below the waist or on their chests. Note: Sometimes you may need to quickly grab a student to prevent injury. This is okay, as long as the touch does not linger.
- Hold students in a long hug.
- Be alone with a student in a locked room. Avoid closed doors when there is no window in the door.
- Rub or massage students—anywhere on their bodies. Note: a brief public massage to loosen an athlete's shoulder is okay.
- Ever be in a car alone with a student. Always try to find another adult to accompany you. If you must take a student home at night after a trip, call the parent or a colleague when leaving, estimate the time it will take to reach your destination, and tell them the route you will be taking.
- Put down women or men as a group.
- Try to date a student or make flirting comments or gestures.
- Talk about private bodily functions around students, unless it is part of the curriculum unit you are teaching.
- Joke about this list with students.
- Permit students to make sexually demeaning comments about each other or tell sexual jokes.
- Tell sexual jokes where students may hear.
- Hang suggestive pictures on your bulletin board, or hang pictures of women only because of their appearance and men only because of what they accomplish.
- Perpetuate sex discrimination.

able to you. Perhaps you are the last adult in school at night, and a student who lives ten miles from school has missed the bus, with little hope of a family member picking him up. It is very cold and getting dark, so of course you will not leave the student outside the school. How can you protect yourself? I tell participants in my workshops that in that situation, the school employee should try to call the student's home. If someone is there, tell them that you are bringing the boy home, that you intend to leave momentarily, and that you anticipate arriving there in ten minutes. Then call the principal and let her know what is happening and tell her you will call as soon as you reach home after dropping off the boy. I know it seems cumbersome and unnecessarily cautious, but in my experience one never knows what accusation will pop up. Do everything you can to let your principal or supervisor know exactly what is happening.

Sometimes, students can put educators in compromising positions, through no intent of the adult. For example, a female student who has a crush on a teacher or counselor may hang around the adult's office until long after everyone else has left the building. First, try never to let that happen; tell the student he or she must leave after a reasonable time. If you do find yourself in that situation, and the student tries to touch you or talks about intimate desires, get out of the situation as quickly as possible, then let your supervisor know immediately what happened. Have several strategies on hand to employ in the future so you are not in that position again.

Coaches, music and drama teachers, and extracurricular advisors may find more than usual opportunities to be alone with students, as mentioned in an earlier chapter. Make sure that younger people in those positions have an opportunity to discuss strategies for avoiding compromising situations. Remind experienced coaches and teachers that they should avoid questionable situations.

It is sad that we must discuss these types of prevention activities, especially with people who work with students because they care about them. Given the propensity for allegations and litigation, however, I would rather inconvenience an adult in a school a few times than see him or her be accused of improper behavior.

Summary of prevention strategies:

- work to eliminate sex role stereotyping and gender-based discrimination;
- make it clear through policy and behavioral guidelines that sexual harassment and abuse will not be tolerated in your school;
- make sure that a user-friendly procedure is available to students and staff who want to report sexual harassment;
- assess the environment to be alert to behavior in your school that may cause sexual harassment to flourish or which might be called illegal sexual harassment;
- provide staff development for those working with students that helps them develop and implement a K-12 developmentally-appropriate sexual harassment prevention curriculum;
- ensure that students or staff who have experienced harassment or assault have access to counseling, if needed;
- make sure criteria are included in job evaluations that require sex-fair treatment of everyone in the school;
- let parents know that the school is taking the issue of sexual harassment and abuse seriously and will not tolerate harassing behavior from students or staff.

When prevention activities do not eliminate all vestiges of sexual harassment, school services personnel may be required to take part in investigations. The last chapter outlines suggestions for conducting an effective investigation, how to help students or colleagues who are filing complaints, and how to maintain your own mental health while taking part in a messy investigation.

Chapter Four

Student Services Practice:

What You Need to Know to Intervene In and Investigate Sexual Harassment

In the second year after the Clarence Thomas hearings, when I was receiving so many calls dealing with sexual harassment complaints, I realized I needed to facilitate a workshop for administrators that focused on how to investigate a complaint. There were at least two reasons: first, they had not learned how to investigate in administrator training, and secondly, with a topic like sexual harassment, one must take special care to nurture the target, while protecting the due process rights of the accused.

I designed a day-long workshop and sent out brochures. I was inundated with responses and had to hold the initial workshop in three locations around Wisconsin instead of at one site. At the first workshop, I was stunned to realize that most of the administrators had brought a team along that included mostly school counselors, social workers, and school psychologists. I had not counted on that group attending, but it made sense when I thought about it.

As noted earlier, counselors are often the first people to find out about students being harassed. Their colleagues come to them with allegations as well because of their training and accepting professional attitudes. They are expected to believe what others say about difficult and sensitive issues. They are known to have helpful suggestions about what to do.

In future workshops, I recognized the critical function of school services personnel. Because so many educators in those roles are involved in investigation of complaints, this chapter will focus on how to intervene if you become aware of harassing situations, and what to keep in mind if you are a part of an investigation team.

Intervention strategies

Counselor obligations. Anyone who spends time in a school will observe potentially illegal sexual harassment. At the very least, one will notice sexually offensive talk and inappropriate physical interaction. What are the obligations of employees of the school district in these cases? What can we possibly do that will help; wouldn't we be stopping every few feet as we walk down the school hallway?

I do not believe that the law requires us to put a stop to every single incident in a school that might turn into sexual harassment. Our primary obligation is to maintain a safe environment that encourages students to be engaged in learning.

And, let's face it, we all pick our battles, not wanting to expend all our energy on every incident. However, when the educational environment becomes hostile, offensive or intimidating and we are aware of that, we have a duty to intervene. When we overhear someone promising favors for sex (quid pro quo sexual harassment), as adults in the school, we must find out what is happening.

We can intervene if, for example, a young man is using sexual descriptions to demean another student. A counselor might observe a group of girls giggling as they "assess" the boys' masculinity in sexual terms as they walk past the girls in the hallway. Students should be told immediately that these types of verbal ridicule are inappropriate and are contrary to the school's policy.

I believe that the school's policy, if it is a good one, can be used as a standard with which to measure a student's behavior (See Appendix C for sample school policy.). If students are told to stop a particular behavior, state your expectations for them in the future. You may also indicate what your actions will be following the interchange. Phrases you might use include:

> *"Excuse me, that type of comment is inappropriate. Please stop it immediately."*

> *"Joe, you know about our sexual harassment policy. Please review it and meet me after school for a brief discussion."*
>
> *"Ryan, stop for a moment and think about what you just said. It sounds like sexual harassment to me. What does our policy say?"*
>
> *"Lauren, you and the other girls must stop making those comments to the boys who pass by. I will report this to Mr. Carley."*

Document, document, document! If you intervene in a potential sexual harassment situation, I strongly suggest that you write down the date, who was involved, what occurred and what you did. Not only will this protect you personally, it may serve your school district well in the event of a suit against the district. Your notes can prove that the school knew of the harassment and tried to do something about it.

Documentation need not be formal; a notation on a private calendar or a hand-written note in a file at home will do. If you feel, in your professional judgment, that the incident was severe or may have been repeated frequently, report it to the principal or the complaint officer in your school. And document it.

Sometimes it is difficult to report an incident, especially when an adult colleague may be implicated.

> *A school counselor was working with a female student who was complaining of sexual harassment by a teacher. The counselor reported the situation to the principal, who did nothing, even after repeated attempts by the counselor to urge the principal to do something to investigate the teacher's behavior. After several weeks, the counselor went directly to the superintendent to inform him of the alleged conduct by the teacher. Eventually, the teacher was investigated and the district found he had illegally harassed the student.*

In this case, the counselor took her responsibility very seriously. When the principal did nothing to investigate, she went to another administrator, which could have been dangerous for her. Initially, there were negative repercussions from the principal and the superintendent, both of whom resented her bypassing the principal. They tried to reprimand the counselor by placing a letter of reprimand in her personnel file. In a hearing in which the counselor was supported by her union, she was exonerated. She was correct in taking the action to protect the student against alleged harassment.

I do not share this situation in order to have a "chilling effect" on the intentions of counselors to report, but it is important to recognize that it is sometimes scary to report a colleague. Neither do I intend that school services personnel become undercover agents, looking for behavior of colleagues they can report. But our obligation here is to the student, not our colleagues. If this seems scary to you, think about how the student felt about reporting the behavior.

To repeat: When a student makes allegations against a teacher to a school counselor or social worker, the adult has the duty to report the allegation to school authorities.

Confidentiality concerns. Often, when I talk about the obligation to report to school services personnel, they protest that interactions between them and the students they counsel are covered by confidentiality protections. I disagree in the case of sexual harassment. Certainly one would not gossip or shout out the names or actions of people involved; only those who *need to know* should be informed. Reporting allegations of sexual harassment or assault are analogous to reporting child abuse or other situations in which children might be harmed or harm themselves.

Many states have laws that require adults who work with children to report suspicions about a child being harmed. Called 'mandatory reporting' laws, these legal requirements mandate all teachers and counselors to inform their administration or the county social services department if they learn (from the child or anyone else) that the child's life or well-being is in danger from a parent, other care-giver or adult. Generally, this means that incidents such as suspected child abuse, life-threatening alcohol or drug abuse, or when the adult thinks the child may hurt him or herself are causes for reporting. Sexual harassment is a similar type of case; the potential for the students being hurt are present. Not only does the counselor have an obligation to help the child, he or she has an obligation to let the school know about harassment in school programs. Although talking about sexual harassment is often difficult for a student and he or she does not want her teacher or friend to know that someone i "telling," the student's safety and concern for the liability of the school are more important than absolute confidentiality.

Helping student clients who allege harassment. Students who come to student services professionals for assistance in a harassing situation may need immediate protection from the alleged harasser. Much depends on the seriousness of the allegations and the ages of the target and the perpetrator. If the alleged perpetrator is another student and the harassment is verbal, happening for the first time, lesser measures may be required. Helping the student respond responsibly to the next incident would seem to be a good strategy at this point. (An inquiry about the behavior of the alleged perpetrator is necessary too.)

If the harassing behavior is more serious, school officials will need to determine what would be in the best interests of the target as they investigate.

> *In a small rural school, a female student alleged that several boys in one of her classes were making seriously offensive sexual remarks to her, day after day. She alleged that the teacher heard the remarks but did nothing. Because the school was small, there were no other classes to which she could transfer, so she stayed in the classroom while the investigation team worked. The administration, both principal and superintendent, wrote letters to the student and her parents the same day her written complaint was filed, acknowledging receipt of the complaint and outlining their investigation plan. A team of three was chosen for the investigation: the principal, a guidance counselor, and a classroom teacher. They quickly called in the accused students and the teacher, and after interviewing them warned them not to retaliate against the complainant. Within ten days the investigation was complete, the parents of the perpetrators had been contacted by mail and by phone, the complainant and her parents received letters outlining the outcome of the investigation, and the teacher had participated in a hearing, after which he received a letter of reprimand in his personnel file. The perpetrators received fairly severe disciplinary actions. The young woman finished her junior year without further incident.*

It is always preferable to remove the harasser instead of the harassed, but in the initial stages the situation may not be clear, so it might not be wise to change a class schedule for an accused student without investigation. At this point, it may be more effective to change the complainant's classes or take other steps to ensure his or her safety.

If a teacher or other adult is accused of inappropriate sexual behavior, it is usually wise to reassign the employee to a job away from students while the investigation takes place. He or she has due process rights, so attorneys advise to keep the accused on salary, investigate quickly, and only discuss details with those who must know to help the investigation progress smoothly. The complainant's school life should proceed as normally as possible, and the school may want to provide counseling services if needed.

Investigation of Complaints or Allegations

If you are called on to be a part of the school's ongoing sexual harassment team, ask how you will receive training for this role. The training should be provided by someone who is familiar with both schools and with sexual harassment issues in schools. Sex equity staff at state education agencies may provide the training, or independent consultants may be available in your state. I have also heard a few attorneys who are very good at explaining the legal requirements while sensitive to specific school environments. Whoever you are considering to provide training for you and your investigation team, ask for references and look for experience in both areas.

There are some excellent materials that provide guidance for investigators. The McGrath videos and print materials are particularly effective in designing training for administrators and those investigating in schools (McGrath, 1997). They include step-by-step suggestions that administrators love. In addition, I have found that participants benefit from and enjoy testing their skills using the case studies included in Appendix G. Appendix D provides a sample agenda for a day-long workshop with complaint investigators.

The role of the school services professional in investigation. In some schools with which I work, counselors serve as "fact-finders" rather than as official members of the school's investigation team. In the fact finder role, they can be first-line listeners, specialists to whom students or staff can go to ask for information, verify feelings, or request support. If the student or teacher files an official complaint, the counselor can forward the written complaint to the district complaint officer. The counselor may also ask initial questions in a situation, to try to discover more facts, support the complainant, or assure safety. This role seems to work effectively in the schools in which it operates.

In other schools, administrators and staff have decided that school counselors should be deliberately kept out of the investigation process so that they can provide assistance to the target and alleged perpetrator. You will need to work that out with your school, but I suggest you decide before you get a complaint so investigations can follow a consistent pattern.

Initial suggestions for investigators. If you are called upon to be an official member of a team investigating a specific complaint, there are a few things to keep in mind to maintain professional ethics. Keep in mind that each situation is different and the hints provided in this book may not be applicable in all cases. Some of these suggestions are just common sense and self-evident, but I repeat them here because in my experience some people do not remember them when an investigation begins.

- Do not discuss the complaint with anyone not on the investigation team. If it is a particularly messy and difficult case, talk with other members of the team or seek a professional counselor rather that involve your best friend or spouse. You may be asked in court to list those you have discussed the case with.
- If the allegation concerns a colleague, do not go to the colleague to warn him or her. The colleague may not understand why you have not discussed the case with him or her when it comes to light, but by keeping quiet you are protecting the alleged perpetrator as well as yourself, the complainant, and the school.
- When interviewing the complainant, be careful not to let the discussion turn into therapy. Keep your counseling role separate from your investigatory role. You can be emotionally connected without being drawn into the situation. If the complainant needs professional support, the school can provide a list of outside

counselors or psychologists.

- Avoid comments that might be interpreted as dismissal or disbelief of the complainant's charges. Even if you DO think the allegations are not true, it should not be evident to the complainant. Nothing shuts down someone more than the feeling that the listener thinks they are making something up. Your role in the process is to find out the truth, not pass judgment on the veracity of the person filing the complaint. The facts, not your feelings about the complainant, will support the complaint or disprove it.
- If a student complains about sexual touching, use your professional judgment and the district's practices in deciding whether to involve parents or guardians. In most cases, parents should be called; when young children are concerned, call them. Parents should definitely be involved if the police are called, of course. However, there are some situations when, if the situation does not include sexual assault, that the students might be safer if the parents are not called. For example, a student who is gay or lesbian may not yet have told his or her parents about her sexual orientation. That student may fear physical violence from disapproving parents if they are told that the student has been verbally harassed; anecdotal reports illustrate tragic examples of parental abuse. In those cases, you must weigh facts in the entire situation before deciding to call the parents or guardians.
- Act on the premise that the complainant is telling the truth, but balance that with the rights of the accused to be held innocent until proved guilty. This is a critical reason why prompt investigation is so necessary.

Before investigation is needed. The school should think ahead and prepare a format to use when complaints of sexual harassment are filed. The components should, at minimum, include:

- general timelines for completion of any investigation, leaving leeway for relative complexity of each situation;
- a list of employees who might be asked to take part in the investigation as members of a 2-3 person team;

- when or whether to involve the school's legal counsel;
- the outline of an investigation plan, which should be completed before any investigation starts;
- the outline of a report of the investigation and how records of the report are maintained.

Beginning the investigation. Before the team begins, it should develop a plan. As suggested above, it would be immensely helpful if the school district has thought ahead and provided a general outline for the plan. An investigation plan might include the timeline to be followed, the investigators on the team, a list of interviewees to be contacted, who will coordinate the intake of information, where the information will be stored, the tasks each team member will undertake during the investigation; a protocol that includes questions to be asked of witnesses or others involved, and documents or evidence to be examined. The team may want to discuss whether or not to audiotape the interviews, if the interviews would be transcribed to resolve conflicts later (not cost effective unless needed for court suits), whether union representatives or attorneys will take part.

Investigating. If you find you are a member of a sexual harassment or assault investigation team, try to clear your calendar and work as quickly as possible to complete your investigation tasks. Keep notes on a secure computer or in a locked file drawer, but let other team members know where the notes are located.

Mary Jo McGrath (1997) provides useful forms to use when interviewing, with check lists to guide investigations and interviews.

Documentation. A written report should be prepared at the end of every investigation of sexual harassment in which a written complaint has been filed. The report may be placed in a central, locked file known to administrators. School board members may be aware of the investigation and request information about the results. If possible, try to provide the results in closed session and do not release copies of the report.

If a teacher or other employee protected by a negotiated agreement is accused, a report should be placed in the employee's file. Many employee unions have negotiated with administration to have letters of reprimand removed after a certain length of time, perhaps a year. That can be done, but the school must retain a copy of the investigation report in its central locked file. Even if the employee's file is empty after the allotted time, the school district must record disposition; in some cases, later allegations provide evidence of a pattern of inappropriate behavior around children that is used for serious disciplinary action.

In some states, administrators are required to report to the state licensing agency when an employee leaves because of "immoral conduct." The agency is then required to investigate the incident and may take away the employee's license if probable cause is found. The state agency sometimes must inform all schools in the state of the license forfeiture. This law is designed to stop the so-called "mobile molester" from securing a job with children in another school district. Note that when a state agency investigates immoral conduct, the standard of proof may be lower for a civil offense than for a criminal offense. The police may not have enough evidence to charge the offender, but the licensing agency may have enough evidence to revoke his or her license to work around children.

I advise those in schools who are investigating to assume that some other agency will be reading their report. In most cases, the incident stops at the school and no one else reads the investigation report. In some cases, however, the complainant files with the regional Office for Civil Rights, in civil court, or under state statutes. Findings of a complaint may be appealed to a higher authority also. In any of those cases, the other investigators will almost certainly want to review the findings of the local investigation team. Better that the school did a thorough job the first time than be reversed or dismissed for an inadequate job.

Reporting. When a school investigation team files its report, usually very few people will actually see it. Generally, only the administrator who determines what subsequent action to take needs to read the actual report. If students are involved, laws protecting the privacy of minors apply. If employees are involved, either as complainant or accused, their rights are probably protected as well. Frequently, when a student files a complaint against a teacher, the student or his or her parents will never know what actual reprimand took place as a result of the complaint. If someone files a complaint against another student, the accused student, usually minor, is protected from invasion of privacy as well. That means many complainants will be frustrated, because they do not know the outcome of the complaint. Student services professionals should be prepared to deal with this frustration. In order to reduce the likelihood that complainants experience frustration, the school would do well to include language in its policy, and make sure that when complaints are filed, the complainants are told immediately that they may not know the outcome. The responsibility of the school is to stop the offending behavior, not provide compensation or revenge for the filer.

Protecting Yourself

If accused. In Chapter Three, I discussed steps to take to avoid allegations of sexual harassment. If it happens that you are accused falsely, there may be steps you can take to minimize the damage to your reputation. Get assistance immediately—a union representative, an attorney, an advocate who knows about the law and can interpret the school's policies. Because I am not an attorney, I do not give legal advice on how to protect yourself. However, I can say that it will hurt your case should you retaliate against the accuser, either during or after the investigation. Be honest, straightforward, and do what your advocate says.

If involved in an investigation. Keep accurate notes in a secure place. Do not talk about the case. Get plenty of rest and take care of yourself. Work collegially. Document what you do and follow the investigation plan. This is no time to 'hotdog' beyond the boundaries of the investigation or sympathize openly with the complainant or the accused. Your job is to get the facts, while connecting with the people you are interviewing.

All this seems like good, common sense. It is. It is also a reminder that when you are deeply involved in a complex, emotionally charged investigation, it helps for much of the process of the investigation to be mechanical, so you can concentrate on the details and on being aware of your own feelings. You may experience loss or shock at the behavior of a favored student or a valued colleague. Pay attention to those feelings and talk to someone confidentially about them. Sometimes those in the helping professions need to accept help themselves.

Making a Difference for Children and Ourselves

We are at a point where we can make a real difference in eliminating sexual harassment, abuse and assault that affects students and school employees. We have some choices: we can choose to continue the 'band-aid' approach, putting out fires effectively as they flare up. Or we can design and carry out plans to change the culture in our schools. We can reflect on the elements of the culture that promote sexual harassment and find ways as a staff to eliminate them. School services personnel can play a leadership role in transforming those negative elements into components of a healing, caring, respectful culture.

Resources Your District Can Use Right Now

Note: These materials may be available on loan or for a modest rental fee from your State Department of Education. Contact the sex equity consultant in that department for information; each state is required to employee a vocational sex equity consultant.

For use with Students:

Crossing the Line-Sexual Harassment Among Students Video (30 min.) and four 40-min lessons (1992). Deals with sexual harassment among students; encourages students to examine and change their behavior concerning sexual harassment and to create their own positive school environment. $350 form Intermedia, 1300 Dexter Avenue North, Seattle, WA 98109. Phone 1-800-553-8336.

Bullyproof: A Teacher's Guide on Teasing and Bullying for Use with Fourth and Fifth Grade Students, by Lisa Sjostrom and Nan Stein(1996). A joint publication of the Wellesley College Center for Research on Women and the NEA Professional Library. Contains eleven sequential core lessons comprised of writing activities, reading assignments, class discussions, case studies and homework assignments. $15.00 from the Center for Research on Women, Wellesley College, 106 Central Street, Wellesley, MA 02181. Phone 617/283-2500.

Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools **(Grades 6-12)**, by Nan Stein and Lisa Sjostrom. The book includes core lessons, reproducible handouts, homework ideas, and background teaching notes, all of which have been written by former classroom teachers and pilot-tested in middle and high schools. 116 pages. Members of NEA may purchase the book for $15.95 ($19.95 is the regular price). NEA Professional Library, P.O. Box 509, West Haven, CT 06516; 800/229-4200; FAX 203/933-5276.

Flirting or Hurting Video with Teacher Guide. $69.95 + $5.00 s/h form GPN, 1800 North 33rd Street, PO Box 80669, Lincoln, NE 68501-0669. Phone 1-800-4630 or (402) 472-2007.

Girls and Boys Getting Along - Elementary Age Sexual Harassment Prevention Curriculum Minnesota Department of Education, 519 Capitol Square Bldg. 550 Cedar St., St. Paul, MN 55101 (612/296-7622). Four lessons, K-3 on respect, dignity, equality and sexual harassment. Three lessons, 4-6 on sexual harassment, sex stereotyping, respect, dignity and equality. Early elementary material suggests the use of frog, snail and turtle puppets. No charge, MN educators; $15 out of state.

Sexual Harassment and Teens: A Program for Positive Change by Susan Strauss with Pamela Espeland, 1992 Free Spirit Publishing Inc. 400 First Avenue North, Suite 616 Minneapolis, MN 55401 $17.95

Sexual Harassment: Issues for Adults and Young People (1995). Three videos (one for ages 13-adult ("In Real Life: Sexual Harassment in Schools," 24 minutes), one for ages 13-18("You Don't Have to Take It,"18 minutes), one for ages 15-adult ("Guidelines for Intervention and Prevention," 21 minutes. Comes with manual to aid in developing or reviewing policies. Altschul Group Corporation, 1560 Sherman Avenue, Suite 100, Evanston, IL 60201 (708/328-6700). FAX: 708/328-6706. 1-800-421-2363. Total package: $500. Free previews available.

Sexual Harassment: It's Hurting People. (1995). 20 minute video and extensive instructional strategies and student activities book. National Middle School Association and Quality Work Environments, Inc. Contact National Middle School Association, 2600 Corporate Exchange Drive, Suite 370, Columbus, Ohio 43231-9992 (1-800-528-NMSA).

Teen Awareness/Sexual Harassment. Video/Teacher's Guide. Grades 9-12. _ Dramatizes three incidents of sexual harassment in school settings; group discussion. $345 + s/h from New Dimensions Media, Inc., 85803 Lorane Highway, Eugene, OR 97405. Phone 503/484-7125.

Tune In To Your Rights A guide booklet for teenagers about turning off sexual harassment. Programs for Educational Opportunity, University of Michigan, Room 1400, School of Education Building, 610 E. University, Ann Arbor, MI 48109-1259 $3.00 each.

Tuning into Sexual Harassment. Video (14 min.) for 4th - 8th grade (1994). Raises preteen awareness and provides stimulus for teen to start thinking about sexual harassment. Defines sexual harassment at age-appropriate level. New Dimensions Media, Inc., 85803 Lorane Highway, Eugene, OR 97405. Phone 503/484-7125. $295 plus $6.00 s/h.

For Administrators and Complaint Officers:

Educator's Guide to Controlling Sexual Harassment Thompson Publishing Group, Inc., 1725 K Street, N.W., Suite 200, Washington, D.C. 20006 1/800/677-3789. Monthly updates. Annual subscription, $287. Guide includes overview; acceptable and unacceptable behaviors; laws on sexual harassment and institutional liability; prevention policies and procedures; formal and informal ways to handle problems and complaints; and training modules for staff and students.

Guidelines for Coaches, Health and Physical Educators in Preventing and Stopping Sexual Harassment in Athletics. A Collection of Strategies, Checklists and Legally-based Information for Educators, Coaches, and Administrators (1995). Pat Callbeck Harper, Harper Consulting Group, 301 South Oakes Street, Helena, Montana 59601-4638. Phone 406/443-1747. FAX 406/443-4946.

Hostile Hallways: **The AAUW Survey on Sexual Harassment in America's Schools**. Commissioned by the American Association of University Women Educational Foundations; researched by Louis Harris and Associates $8.95 member/$11.95 non-member plus $4.00 shipping/Handling: AAUW Sales Office, PO Box 251, Annapolis Junction, MD 20701-0251. 800/225-9998 ext. 246.

How to Stop Sexual Harassment in Our Schools: A Handbook and Curriculum Guide for Administrators and Teachers (1994) Robert J. Shoop and Debra L. Edwards. Boston: Allyn and Bacon.

Secrets in Public: Sexual Harassment in Our Schools (1992) Nan Stein, Nancy L. Marshall, and Linda R. Tropp. Seventeen magazine survey with 4,200 respondents. Center for Research on Women, Wellesley College and NOW Legal Defense and Education Fund collaboration. Available from: Publications Department, Wellesley College, Center for Research on Women, Wellesley, MA 02181-8259; (617) 283-2510; Fax (617) 283-2504. $11.00

Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties. U.S. Department of Education Office for Civil Rights. Federal Register, March, 1997. http://www.ed.gov/offices/OCR/ocrpubs.html

Sexual Harassment: It's Not Academic. Pamphlet summarizing the Guidance issued by the Office for Civil Rights. Available at http://www.ed.gov/offices/OCR/ocrshpam.html

Sexual Harassment in Schools: What it is: What to do. National Association of State Boards of Education 1012 Cameron Street Alexandria, Virginia 22314 (800) 220-5183 $7.50 or discount for bulk orders. Overview; Lessons from cases; Recommendations for State Actions. (Policies, guides, teaching strategies, more info.)

Sexual harassment: Minimize the Risk. (Revised 1996). A Six-Part, legally-Based Video Training System for Students, Adults in Schools, and Members of the Community. Six videos for the three audiences, curriculum units consisting of glossary, suggested directed instruction and methods, student activities, and reproducible pages for student and community handouts. Also includes videos and handouts for administrators investigating complaints of sexual harassment. McGrath Systems, Inc., 221 E. Victoria Street, Suite B, Santa Barbara, California 93101 (805/882-1212; Fax: 805/882-1209).

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Appendix A

State Law Prohibiting Sex Discrimination and Sexual Harassment

Please note: State Statutes may change. Please contact your state legislature, an attorney or your state sex equity consultant (usually working at your state education agency) to verify your state statutes prohibiting sex discrimination and sexual harassment. It is also important to review your state's definition of sex discrimination; sexual harassment may be included in that definition. Administrative rules not included here may also require that schools adopt policies and complaint procedures, codes, or executive orders.

	State Statutes				Required School Policies	
State	**Sex Discrimination/ Employees**	**Sex Harassment/ Employees**	**Sex Discrimination/ Students**	**Sex Harassment/ Students**	**Policy Prohibiting Harassment**	**Complaint Procedures**
Alabama						
Alaska	X	X	X			
Arizona	X					
Arkansas	X	X				
California	X	X	X	X	X	X
Colorado	X	X				
Connecticut		X				
Delaware	X					
District of Columbia	X	X				
Florida	X	X				
Georgia	X					
Hawaii	X	X	X			
Idaho	X		X			
Illinois	X	X	Higher Education			
Indiana	X	X				
Iowa	X	X	X	X	X	X
Kansas	X	X				
Kentucky	X		X			
Louisiana	X					
Maine	X	X	X			
Maryland	X					
Massachusetts	X	X	X	X		
Michigan	X	X	X			
Minnesota	X	X	X	X	X	X
Mississippi	X					
Missouri	X	X				
Montana	X		X	X		
Nebraska	X		X			
Nevada	X					
New Hampshire	X	X				
New Jersey	X		X			
New Mexico	X	X				
New York	X	X				

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Appendix A continued

State Statutes					Required School Policies	
State	Sex Discrimination/ Employees	Sex Harassment/ Employees	Sex Discrimination/ Students	Sex Harassment/ Students	Policy Prohibiting Harassment	Complaint Procedures
North Carolina	X	X				
North Dakota	X	X				
Ohio	X					
Oklahoma		X				
Oregon	X	X				
Pennsylvania	X	X	X			
Rhode Island	X	X	X			
South Carolina	X					
South Dakota	X	X	X			
Tennessee	X	X		Higher Education		X
Texas	X	X				
Utah		X				
Vermont	X	X	X	X		
Virginia	X	X				
Washington	X	X	X	X	X	X
West Virginia		X				
Wisconsin	X	X	X	X	X	X
Wyoming	X					

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Appendix B

Preventing Harassment: Information on State and Federal Laws Prohibiting Sexual Harassment

Wisconsin Prohibits Harassment of Students

S. 118.13, Wis. Stats. states that "no person (meaning student) may be denied admission to any public school, or be denied participation in, or be denied the benefits of, or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional, or learning disability."

Discrimination is defined as "any action, policy or practice, including bias, stereotyping and pupil harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or groups of persons opportunities, privileges, roles or rewards based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability or which perpetuates the effects of past discrimination." [PI 9.02(5)].

Pupil harassment means 'behavior toward pupils based, in whole or in part, on... (see categories above).., which substantially interferes with a pupil's school performance or creates an intimidating, hostile, or offensive school environment." [PI 9.02(9)]

Federal Law Protects Students and School Employees

Sexual harassment is a form of sex discrimination that violates the equal protection clause of the 14th Amendment to the U.S. Constitution and Title IX of the federal Education Amendments of 1972.

In Wisconsin

Employees protected from sexual harassment... "Employment discrimination because of sex includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency or other person: ...(b)Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment or the basis or any part of the basis for any employment decision affecting an employee; or permitting sexual harassment to substantially interfere with an employee's work performance or to create an intimidating, hostile or offensive work environment." (s. 111.36, Wis. Stats.)

...and discrimination in many other categories

"...no employer, labor organization, employment agency, licensing agency or other person may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the basis of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record or membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state." (s 111.321, Stats.)

Federal Guidelines in Employment Led the Way...

Federal guidelines defining sexual harassment under Title VII of the Civil Rights Act of 1964 were issued by the U.S. Equal Employment Opportunities Commission in 1980. They defined sexual harassment as "any unwanted sexual advance, request for sexual favors and any other verbal or physical conduct of a sexual nature, particularly when:

- submission to the conduct is either an explicit or implicit term of employment,
- submission to or rejection of the conduct is used as a basis for employment decisions affecting the person who did the submitting or rejecting, or
- the conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment."

Notice the similar wording in the laws and codes, particularly as they describe the effects of harassment.

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Appendix C

Sample School District Policy

Note: Every school district should design its own policy and prepare to update the policy if it is not effective. The policy below is offered as an example that contains the elements of a good policy.

Sexual Harassment And Sexual Violence Policy

I. General Policy

Sexual harassment is a form of discrimination prohibited by Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, as well as state statutes that protect students (S. 118.13, Wis. Stats. and PI 9) and employees (Wisconsin Fair Employment Act). Between adults, sexual harassment is any unwanted attention of a sexual nature. Between adults and students, sexual harassment is any sexual attention by the adult toward the student. Sexual violence is a physical act of aggression that includes a sexual act or sexual purpose.

(Your School's Name) is committed to maintaining a learning environment that is free from sexual harassment and sexual violence, where all employees and students can work and study together comfortably and productively. The School District prohibits any form of sexual harassment or sexual violence.

It shall be a violation of this policy for any student or employee of (Your School's Name) to harass a student or an employee through conduct or communication of a sexual nature as defined by this policy. It shall be a violation of this policy for any student or employee of (Your School's Name) to be sexually violent to a student or employee.

The School District will act to investigate all complaints, either formal or informal, verbal or written, of sexual harassment or sexual violence and to discipline any student or employee who sexually harasses or is sexually violent to a student or employee of the School District.

II. Definition of Sexual Harassment and Sexual Violence

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or of obtaining an education; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or

3. The conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's work employment or education, or creating an intimidating, hostile, or offensive employment or education environment.

III. Two Types of Sexual Harassment as Defined by the Office of Civil Rights

Quid pro quo harassment. A school employee explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Quid pro quo harassment is equally unlawful whether the students resists and suffers the threatened harm or submits and thus avoids the threatened harm.

Hostile environment sexual harassment. Sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature) by an employee, by another students, or by a third party that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment. Examples of prohibited behavior that is sexual in nature and is unsolicited and unwelcome include:

a) Written Contact—sexually suggestive or obscene letters, notes, invitations, drawings. This also includes computer terminal messages of a sexual nature.

b) Verbal Contact—sexually suggestive or obscene comments, threats, jokes (including jokes about racial and gender-specific traits), any sexual propositions, comments about an employee's body or sexual characteristics that are used in a negative or embarrassing way.

c) Physical Contact—any intentional pats. squeezes, touching, pinching, repeatedly brushing up against another's body, assault, blocking movement, or coercing sexual intercourse.

d) Visual Contact—suggestive looks, leering, or staring at another's body, gesturing, displaying sexually suggestive objects or pictures, cartoons, posters or magazines.

e) Sexual Blackmail—Sexual behavior to control another employee's work environment is also prohibited—this includes salary, promotions. evaluations and/or better job assignments or grades.

Every effort will be made to eliminate sexual harassment by non-employees including parents, suppliers, and other visitors to the school.

III. Reporting Procedures

Any person who believes he or she has been the target of sexual harassment by a student or an employee of the School District, or any person with knowledge or belief of conduct which may constitute sexual harassment or sexual violence, should report the alleged acts immediately to an appropriate School District official as designated by this policy. The School District encourages the reporting party or complainant to make his or her report in writing.

A. In Each School Building. The building principal is the person responsible for receiving oral or written reports of sexual harassment or sexual violence at the building level. Upon receipt of a report, the principal must notify the (designated administrator) immediately without screening or investigating the report. A written report will be forwarded simultaneously to the (designated administrator). If the report is given verbally, the principal shall reduce it to written form within 24 hours and forward it to the (designated administrator). Failure to forward any sexual harassment or sexual violence report or complaint as provided herein will result in disciplinary action. If the complaint involves the building principal the complaint shall be filed directly with the (designated administrator).

B. District-Wide. The School Board hereby designates the (designated administrator) to receive reports or complaints of sexual harassment and sexual violence from any individual, employee or victim of sexual harassment or sexual violence and also from the building principals as outlined above. If the Complaint involves the (designated administrator), the Complaint shall be filed directly with the Superintendent. If the complaint involves the Superintendent, the complaint shall be filed with the (designated administrator), who shall report the complaint to the Chair of the School Board. The School District shall conspicuously post the name of the (designated administrator), including a mailing address and telephone number, in each building operated by the School District.

C. Submission of a complaint or report of sexual harassment or sexual violence will not affect the complainant's future employment, grades, or work assignment.

D. Use of written complaints is not mandatory, although timelines under the state statute prohibiting discrimination and harassment do not take effect unless a written complaint is filed. The School District will respect the confidentiality of the complainant(s) and the individual(s) against whom the complaint is filed, as much as possible, *consistent with the School District's legal obligations and the necessity to investigate allegations of sexual* *harassment and sexual violence and take disciplinary action when the conduct has occurred.* Note: at some point, the name of the complainants may have to be given to the alleged perpetrator, though all efforts possible will be made to protect the complainant and assure that they do not have to meet alone with the alleged perpetrator. See also Section VI-Reprisal.

IV. Investigation and Recommendation

By authority of the School District, the (designated administrator), upon receipt of a report or complaint alleging sexual harassment or sexual violence, shall immediately authorize an investigation. This investigation may be conducted by School District officials or by a third patty designated by the School District. The investigating patty shall provide a written report of the status of the investigation within 10 working days to the District Administrator and the (designated administrator).

In determining whether the alleged conduct constitutes sexual harassment or sexual violence, the School District should consider the surrounding circumstances, the nature of the sexual advances, relationships between parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment or sexual violence requires a determination based on all the facts and the surrounding circumstances.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

In addition, the School District may take immediate steps, at its discretion, to protect the complainant, students, and employees pending the completion of an investigation of alleged sexual harassment or Sexual violence.

The (designated administrator) shall make a report to the District Administrator upon completion of the investigation.

V. School District Action

A. Upon receipt of a recommendation that the complaint is valid, the District will take such action, as appropriate, based on the results of the investigation.

B. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by the School District. The report will document any disciplinary action taken as a result of the complaint.

VI. Reprisal

The School District will discipline any individual who retaliates against any person who reports alleged sexual harassment or sexual violence or retaliates against any person who testifies, assists, or participates in an investigation proceeding or hearing relating to a sexual harassment or sexual violence complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

VII. Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the State Department of Human Rights, initiating civil action, or seeking redress under *state* criminal statutes and or federal law.

VIII. Sexual Harassment or Sexual Violence as Sexual Abuse

Under certain circumstances, sexual harassment or sexual violence may constitute sexual abuse under state statutes. In these situations, the school district shall comply with mandatory reporting procedures.

Nothing in this policy will prohibit the School District from taking immediate action to protect victims of alleged sexual abuse.

IX. Discipline

Any School District action taken pursuant to this policy will be consistent with requirements of applicable collective bargaining agreements, State and District policies. The School District will take such disciplinary action it deems necessary and appropriate, including warning, suspension or immediate discharge, or expulsion, in the case of a student, to end sexual harassment and sexual violence and prevent its recurrence.

No student or employee shall knowingly provide false information to school district officials at any time. If a person knowingly provides false information to school district officials regarding a complaint or other matter, appropriate discipline action may be taken against the individual.

X. Training

Training is the key in establishing a prevention plan for sexual harassment. Yearly training sessions for all employees and students concerning rights and legal options will be established. New employee orientation sessions will include training in sexual harassment. Administrators and teachers will be trained in how to keep the school free from sexual harassment and how to handle sexual harassment complaints.

Appendix D

Student Sexual Harassment Training
Awareness, Prevention, Intervention

Agenda
Forty-five minute session

I. Why this session? (Five minute introduction by facilitator)
Rapid changes in case law and school staff responsibility
Protection for them in school and work

II. What is sexual harassment? (20 minutes)

- Facilitator: presents legal definition in small increments
- Students in small groups or individually, depending on how many students in the session. Give examples of how this looks in school, for example:
- *Definition:* "...unwanted and unwelcome sexual behavior..."
- *Student examples:* "making suggestive or sexual gestures, looks, jokes, or verbal comments, such as 'mooing,' 'barking,' and other noises" when a particular girl walks down the hall
- Facilitator clarifies definition as examples are given by students then hands out definition

III. What can I do? (15 minutes)

A. Tips for students if they feel they are the target of sexual harassment
  - Small groups: describe two things someone could do if they feel they are being harassed. Write on flip chart or chalk board.
  - Facilitator (in large group): clarify, make suggestions. Hand out printed list of what they can do; add their suggestions.

B. Tips for students who have questions about their own behavior.
  - Large group question from facilitator to students: What can/should you do if you have concerns about your own behavior?

IV. Review of school policy. (5 minutes)

Appendix E

Sexual Harassment in Schools

True-False Quiz

T F 1. Laws making sexual harassment illegal have been passed on the federal, state and local level.

T F 2. If I am harassed, I must tell the harasser that the behavior is unwelcome.

T F 3. Statistically, the majority of sexual harassment incidents involve males harassing females.

T F 4. If I tell a joke that someone else finds offensive, I could be facing sexual harassment charges.

T F 5. If a person has good intentions and did not mean to be offensive, the incident(s) should not be reported.

T F 6. Sexual harassment is rare in schools.

T F 7. Sexual jokes and wolf whistles are not considered sexual harassment, but simply rude behavior.

T F 8. Same sex harassment is not covered, for example, a male harassing another male.

T F 9. Sexually suggestive pictures objects are permissible in the workplace if no one complains.

T F 10. The best response to sexual harassment would either be to ignore it or to joke about it with the harasser.

Appendix E continued

Responses to True-False quiz

1. *True*; laws making sexual harassment illegal have been passed on federal, state and local levels (though not all states and localities have them).
2. *False*; if I am harassed, I am not required to tell the harasser that the behavior is unwelcome. I may file a complaint under Title IX or Title VII without contact with the alleged harasser. Note: If possible, it is a good idea to tell the harasser, but in many cases, targets feel threatened and are afraid to confront the person targeting them.
3. True; statistically, the majority of sexual harassment incidents involve males harassing females, according to most research. However, recent surveys find that boys and men report harassment as well, but not with the same frequency. See for example, Hostile Hallways (AAUW, 1994). Violent physical sexual harassment (assault) may also take different forms for women as opposed to men as targets.
4. It could be *true*; if I tell a joke that someone else finds offensive, I could be facing sexual harassment charges. However, each situation is different, and an investigator would certainly look at the frequency with which I tell offensive jokes, if they are offensive enough that other person similarly situated finds them offensive, and what I have done when asked to stop telling them.
5. *False*; if a person has good intentions and did not mean to be offensive, the incident(s) should be reported, if only for documentation. If there are subsequent incidents with the same person, an investigator will want to know abut prior occurrences in order to determine what action will be taken. Please note, however, that each incident need not be filed as a formal complaint; assess the context and make reasonable record.
6. *False*; many surveys have shown that sexual harassment is pervasive in schools (AAUW, 1994; Stein, et.al., 1995).
7. *False*; sexual jokes and wolf whistles may be considered sexual harassment, as well as rude behavior. It depends how often

they occur, if they occur at school or work, at whom they are directed, how people react to them.

8. *False*; same sex harassment is covered, depending on the state in which the incident occurs, under what law the complaint is filed, the nature of the incident (is the harassment sexual as opposed to discriminatory, for example?), among other factors.
9. *False*; sexually suggestive pictures or objects may be inappropriate in the work place even if no one complains. For example, sexually suggestive pictures in a workplace such a as a school where children are present and are not related to the curriculum are almost always inappropriate. (When might they be appropriate? When announcing an art exhibition, for example.)
10. *False*; if there is anything we've learned in the past two decades of working on this issue, it's that sexual harassment does not go away by itself. It must be named and objected to in order to be addressed. Note: many targets of harassment have caused sexual harassment of themselves personally to go away by leaving the situation, but that does not stop the harasser from perpetrating the same behavior on someone new.

Appendix F

Harassment Prevention for School Staff
Note-taking and Small Group Worksheet

1. Identifying the problem

Small Group I: On what bases might students and others harass? As a group, make a short list and prepare to report to the larger group. *Example:* Students might harass on the basis of others' appearance. Your list:

Small Group II: How does harassment manifest itself in schools? As a group, make a short list and prepare to report to the larger group. *Example:* Harassment manifests itself in the form of namecalling. Your list:

2. Identifying the solutions

Small Group III: In general, what works with students (to change negative behavior)? As a group, make a short list and prepare to report to the larger group. *Example:* Deflecting attention to another activity. Your list:

Large Group Notetaking. What curriculum is available already?

Small Group IV: Procedures to follow in your school when harassment occurs. In your small group, respond to the following questions. Note that you may be in a group with people from another school (or schools). Compare their procedures with yours. Prepare to respond to large group by school.

- Who is in charge if complaints are filed verbally? What does the person receiving the complaint do?
- Who do you go to if complaints are to be filed in writing? What does the person receiving the complaint do?
- Who is/should be responsible for maintaining a data base about harassment complaints received?
- Who can serve as a "clearinghouse" or collector for emerging curriculum and strategies on preventing harassment?
- How do we involve parents and other community members to help prevent harassment?

3. What else do we need to know about this subject?

What will help us better prevent and intervene in harassing situations in our school? Talk this over with your group, then write your answers on the evaluation form and hand in. Your responses will form the basis of future efforts if needed. *Examples of suggestions:* survey of students to determine depth of harassment in our school; workshop on how to use a specific curriculum; workshop on instructional techniques to prevent harassment; school-community workgroup to address harassment.

Appendix G

Case Studies in Sexual Harassment

1. A June graduate of district with 1500 students, a young woman, was concerned about a teacher she had had in high school who, in class, would refer to his own sexual behavior with his wife, make jokes about AIDS, glorify "gay-bashing" and make sexual comments to students. The young woman had gone to a counselor at the school who said others had complained but nothing had been done. The teacher was told to stop the verbal behavior, which he did for awhile, then began again, letting students talk and joke about sexual behavior. Graduate finds this unacceptable and wants it to stop.

   a. Do you need more information?
   b. Is this sexual harassment?
   c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
   d. What should be done over the long-term to prevent such occurrences in the future?

2. A teacher in an elementary school wondered what she could do. Over several months, she had observed another teacher in her building having an affair with another district employee, the man who delivers items between schools. The man stopped in the woman's room frequently, they played the radio loudly, and the caller alleged that she had even observed them having sex on the floor of the teacher's room, behind her desk (the caller had gone into the room to ask them to turn down the radio). The principal was told about the situation but did not address it.

   a. Do you need more information?
   b. Is this sexual harassment? For whom?
   c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
   d. What should be done over the long-term to prevent such occurrences in the future?

3. Parents in a school district of 1400 students accused a high school math teacher of verbal abuse and discriminatory treatment toward girls in his classes, including sexual harassment. The parents did not file a complaint officially under the state's pupil nondiscrimination statute or under Title IX, because they were not

aware of the laws' required complaint procedures, but they contacted the school and registered a general verbal complaint. Two hearings were held as a result of the allegations, at which students from several years back testified, mostly in support of the complaint. The board took no action. The former students and several parents of current students felt that the testimony was not taken seriously by the board and that the issue was being swept under the rug. One parent met with her state representative, contacted local women's groups in the area for help, called the regional Office for Civil Rights, contacted a sexual assault help line. In the course of her inquiries, she learned of the state nondiscrimination statute and asked for assistance from the state education agency in filing a formal complaint.

a. Do you need more information?
b. Is this sexual harassment?
c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
d. What should be done over the long-term to prevent such occurrences in the future?

4. A girl on the pom pon squad gets unwelcome comments on the shortness of her pom pon skirt, which the squad wears to school on performance days. The girl does not want to wear the skirt to school, and tells the advisor this. The advisor talks it over with the entire squad and calls for a vote to determine who feels the same way. Three of the sixteen members of the squad concur with the girl. The advisor decides that members of the squad can decide individually if they want to wear the costume on performance days or not. This resolution is not acceptable to the girl's mother, who feels that her daughter is now being singled out.

a. Do you need more information?
b. Is this sexual harassment? Which part is or is not sexual harassment? Is sex discrimination involved?
c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
d. What should be done over the long-term to prevent such occurrences in the future?

5. The mother of a third grade student is concerned for her daughter, who is being scared by a fifth-grade boy on the playground during recess. He allegedly corners the third-grader and makes

sexual remarks to her, tries to grab her genitals, and bullies her. She is afraid to go out for recess. The mother has called the school but the school representative says that the best they can do is tell the girl to either avoid the boy or "stick up for herself" on the playground. This is not acceptable for the mother.

a. Do you need more information?
b. Is this sexual harassment?
c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
d. What should be done over the long-term to prevent such occurrences in the future?

6. Several parents of fifth-graders in a small rural school are concerned about their children who take physical education with a teacher who makes sexual remarks to them and caresses them on the chest and buttocks. This happens to both girls and boys. The parents have contacted the district, which investigated the complaints, suspended the teacher for a day, and turned the case over to the district attorney, who is investigating. The teacher is working as usual after his suspension. The parents do not want the teacher to be near their children, so they have instructed the children not to attend the physical education class. The district has warned the parents that the students must take the class.

a. Do you need more information?
b. Is this sexual harassment?
c. Assuming this is true and determined to be sexual harassment, what might be done immediately?
d. What should be done over the long-term to prevent such occurrences in the future?

Appendix H

Checklist for those assigned to sexual harassment issues in schools

Annually

Publish statements informing employees, students, parents and other community members that the school district does not permit discrimination or harassment on the basis of sex or other group characteristics

- Review discrimination and harassment complaints filed in the school or district in the past year.
  - -Determine if the policies and procedures were workable or need revision.
  - -Ascertain what curriculum or staff developmentactivities could be instituted to prevent such complaints in the future.
- Train new staff about their rights and responsibilities regarding harassment, assault and abuse.
  - -Give them information on how to respond to harassment that they observe or which happens to them
  - -Give them information on resources they might use with staff or students.

Bimonthly

Ask the superintendent to remind administrators of the district's commitment to elimination of discrimination and harassment and to ask the question, "Are there any equity issues that administration should be aware of? What happened and how was it resolved?"

- Review progress of discrimination/harassment complaint resolution.
  - -Make sure complainants and accused are informed of status of each complaint regularly, as possible.
  - -Assure immediate attention and swift, careful resolution.
- Update those who are assigned harassment resolution duties about new developments in legal and educational arenas.

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